THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1995 CUMULATIVE SUPPLEMENT

Volume 5

Chapters 18 through 20

Prepared under the Supervision of

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of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 457 S.E.2d 524. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 5 contains the general laws of a permanent nature enacted by the General Assembly through the 1995 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1995 Regular Session affecting Chapters 18 through 20 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 340, p. 364.
North Carolina Court of Appeals Reports through Volume 118, p. 737.
South Eastern Reporter 2nd Series through Volume 457, p. 524.
Federal Reporter 3rd Series through Volume 53, p. 349.
Federal Supplement through Volume 882, p. 1100.
Federal Rules Decisions through Volume 160, p. 664.
Bankruptcy Reports through Volume 181, p. 677.
Supreme Court Reporter through Volume 115, p. 2020.
North Carolina Law Review through Volume 73, p. 1760.
Wake Forest Law Review through Volume 30, p. 426.
Campbell Law Review through Volume 17, p. 163.
Duke Law Journal through Volume 44, p. 1049.
North Carolina Central Law Journal through Volume 21, p. 178.
Opinions of the Attorney General.

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The General Statutes of North Carolina
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VOLUME 5

Chapter 18B.

Editor's Note. — The legislation and annotations affecting Chapter 18B have been included in a recently published replacement chapter.

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ARTICLE 1.

Abatement of Nuisances.

§ 19-1. What are nuisances under this Chapter.

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(c) The building, or place, or vehicle, or the ground itself, in or upon which a nuisance as defined in subsections (a) or (b) above is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. (Pub. Loc. 1913, c. 761, s. 25; 1919, c. 288; C.S., s. 3180; 1949, c. 1164; 1967, c. 142; 1971, c. 655; 1977, c. 819, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in subsection (a).

Legal Periodicals. —

For article, "Obscenity: The Justices' (Not So) New Robes," see 8 Campbell L. Rev. 387 (1986).

CASE NOTES

Cited in Animal Protection Soc'y of Durham, Inc. v. State, 95 N.C. App. 258, 382 S.E.2d 801 (1989); State ex rel. Rhodes v. Simpson, 325 N.C. 522, 385 S.E.2d 329 (1989).

§ 19-1.1. Definitions.

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution which occur on the premises.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

a. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

b. Which depicts patently offensive representations of:

1. Ultimate sexual acts, normal or perverted, actual or simulated;
2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;
3. Masochism or sadism; or
4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

(3) "Lewdness" is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.

(4) "Matter" means a motion picture film or a publication or both.

(5) "Motion picture film" shall include any:

a. Film or plate negative;

b. Film or plate positive;

c. Film designed to be projected on a screen for exhibition;

d. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

e. Video tape or any other medium used to electronically reproduce images on a screen.

(6) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(7) "Place" includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself, but excluding a private dwelling place not used for a profit.

(8) "Publication" shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(9) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall

include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquor" in subdivision (1).

Subdivision (2), as it is set out above, corrects an error in the indentation of the second paragraph thereof as it appears in the main volume.

Legal Periodicals. —

For article, "Regulation of Pornography — The North Carolina Approach," see 21 Wake Forest L. Rev. 263 (1986).

§ 19-1.2. Types of nuisances.

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this Article;

(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in trade;

(5) Any and every lewd publication possessed at a place which is a nuisance under this Article;

(6) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquor" in subdivision (6).

§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;

(2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;

(3) All money or other valuable consideration received or used in gambling, prostitution, the illegal sale of alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in subdivision (3).

§ 19-2.1. Action for abatement; injunction.

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against the public official or public entity for the official action. (1977, c. 819, s. 4; 1995, c. 528, s. 1.)

Effect of Amendments. — The 1995 amendment, effective December 1, 1995, and applicable to nuisances existing on or after that date, inserted "county, municipality" following "district attorney" in the first sentence and following "Attorney General" in the last sentence; deleted "or" preceding "Attorney General" in the last sentence; and at the end of the last sentence substituted "or public entity for the official action" for "for his official action".

CASE NOTES

Quoted in State v. Felts, 79 N.C. App. 205, 339 S.E.2d 99 (1986).

§ 19-3. Priority of action; evidence.

(a) The action provided for in this Chapter shall be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions.

(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance.

(c) At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance. (Pub. Loc. 1913, c. 761, s. 27; 1919, c. 288; C.S., s. 3182; 1971, c. 528, s. 6; 1973, c. 47, s. 2; 1977, c. 819, s. 5; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in subsection (b).

CASE NOTES

Applied in State ex rel. Gilchrist v. Cogdill, 74 N.C. App. 133, 327 S.E.2d 647 (1985).

§ 19-5. Content of final judgment and order.

If the existence of a nuisance is admitted or established in an action as provided for in this Chapter an order of abatement shall be entered as a part of the judgment in the case, which judgment and order shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere within the jurisdiction of this State. Lewd matter, illegal alcoholic beverages, gambling paraphernalia, or substances proscribed under the North Carolina Controlled Substances Act shall be destroyed and not be sold.

Such order may also require the effectual closing of the place against its use thereafter for the purpose of conducting any such nuisance.

The provisions of this Article, relating to the closing of a place with respect to obscene or lewd matter, shall not apply in any order of the court to any theatre or motion picture establishment which does not, in the regular, predominant, and ordinary course of its business, show or demonstrate lewd films or motion pictures, as defined in this Article, but any such establishment may be permanently enjoined from showing such film judicially determined to be obscene hereunder and such film or motion picture shall be destroyed and all proceeds and moneys received therefrom, after the issuance of a preliminary injunction, forfeited. (Pub. Loc. 1913, c. 761, s. 29; 1919, c. 288; C.S., s. 3184; 1977, c. 819, s. 6; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in the first paragraph.

CASE NOTES

Cited in State ex rel. Brown v. Smith, 74 N.C. App. 599, 328 S.E.2d 810 (1985).

§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner. (Pub. Loc. 1913, c. 761, s. 30; 1919, c. 288; C.S., s. 3185; 1977, c. 819, s. 7; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in the third paragraph.

§ 19-6.1. Forfeiture of real property.

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the illegal possession or sale of narcotic drugs as defined in G.S. 90-87(17), the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) had written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale and additional monies, if necessary. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners. (1995, c. 528, s. 2.)

Editor's Note. — Session Laws 1995, c. 528, s. 3, made this section effective December 1, 1995, and applicable to nuisances existing on or after that date.

ARTICLE 2.

Civil Remedy for Sales of Harmful Materials to Minors.

§ 19-13. Commencement of civil proceeding.

(a) Whenever the district attorney for any prosecutorial district has reasonable cause to believe that any person is engaged in selling, distributing or disseminating in any manner harmful material to minors or may become engaged in selling, distributing or disseminating in any manner harmful material to minors, the district attorney for the prosecutorial district in which such material is so offered for sale shall institute an action in the district court for that district for adjudication of the question of whether such material is harmful to minors.

(b) The provisions of the Rules of Civil Procedure and all existing and future amendments of said Rules shall apply to all proceedings herein, except as otherwise provided in this Article. (1969, c. 1215, s. 1; 1971, c. 528, s. 8; 1973, c. 47, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 73.)

§ 19-18. Judgment; limitation to district.

(a) In the event that the court or jury, as the case may be, fails to find the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment accordingly and shall dismiss the complaint.

(b) In the event that the court or jury, as the case may be, finds the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any respondent prohibiting him from selling, commercially distributing, or giving away such material to minors or from permitting minors to inspect such material.

(c) No interlocutory order, judgment, or subsequent order of enforcement thereof, entered pursuant to the provisions of this Article, shall be of any force and effect outside the district court district in which entered; and no such order or judgment shall be res judicata in any proceeding in any other district court district. (1969, c. 1215, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 74.)

Chapter 19A.

Protection of Animals.

Article 1.

Civil Remedy for Protection of Animals.

Sec.
19A-1. Definitions.
19A-2. Purpose.

Article 3.

Animal Welfare Act.

Sec.
19A-40. Civil Penalties.

ARTICLE 1.

Civil Remedy for Protection of Animals.

§ 19A-1. Definitions.

The following definitions apply in this Article:

(1) The terms "animals" and "dumb animals" include every useful living creature.

(2) The terms "cruelty" and "cruel treatment" include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted; but these terms shall not be construed to include lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, lawful activities sponsored by agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting such livestock or poultry.

(3) The term "person" includes any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals. (1969, c. 831; 1979, c. 808, s. 2; 1995, c. 509, s. 19.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, in the introductory language, substituted "The following definitions apply in this Article" for "For the purposes of this Chapter the following definition of terms shall be applicable"; in subdivision (1), deleted "shall be held to" following "'dumb animals'"; in subdivision (2), deleted "shall be held to" following "'cruel treatment'" and substituted "these terms" for "such term"; and in subdivision (3), substituted "includes" for "as used herein shall be held to include".

§ 19A-2. Purpose.

It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any "person" as hereinbefore defined even though such person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal. (1969, c. 831; 1995, c. 509, s. 20.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "Article" for "Chapter".

ARTICLE 3.

Animal Welfare Act.

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. (1995, c. 516, s. 6.)

Editor's Note. — Session Laws 1995, c. 516, s. 17, provides that this section is effective October 1, 1995, and is applicable to violations occurring on or after that date.

Chapter 20.

Motor Vehicles.

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Division of Motor Vehicles.

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Article 2.

Uniform Driver's License Act.

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20-13.2. Grounds for revoking provisional license.
20-15.1. Revocations when licensing privileges forfeited.
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20-17. Mandatory revocation of license by Division.
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20-19. Period of suspension or revocation.
20-24. When court or child support enforcement agency to forward license to Division and report convictions, child support delinquencies, and prayers for judgment continued.
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Part 3. Registration and Certificates of Titles of Motor Vehicles.

20-50. Owner to secure registration and certificate of title; temporary registration markers.
20-50.4. (Effective December 1, 1996) Division to refuse to register vehicles on which taxes are delinquent and when there is a failure to meet court-ordered child support obligations.
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ARTICLE 1.

Division of Motor Vehicles.

§ 20-1. Division of Motor Vehicles of the Department of Transportation; powers and duties.

Local Modification. — Dare: 1995, c. 196, s. 1.

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(0.1) Alcohol. — Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(0.2) Alcohol Concentration. — The concentration of alcohol in a person, expressed either as:
  a. Grams of alcohol per 100 milliliters of blood; or
  b. Grams of alcohol per 210 liters of breath.

(1) Business District. — The territory prescribed as such by ordinance of the Board of Transportation.

(2) Canceled. — As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or fraud is void and terminated.

(2a) Class A Motor Vehicle. — A combination of motor vehicles that meets either of the following descriptions:
  a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
  b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. — Any of the following:
  a. A single motor vehicle that has a GVWR of at least 26,001 pounds.
  b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at

least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. — Any of the following:
  a. A single motor vehicle not included in Class B.
  b. A combination of motor vehicles not included in Class A or Class B.

(3) Repealed by Session Laws 1979, c. 667, s. 1.

(3a) Chemical Analysis. — A test of the breath or blood of a person to determine his alcohol concentration, performed in accordance with G.S. 20-139.1. The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.

(3b) Chemical Analyst. — A person granted a permit by the Department of Environment, Health, and Natural Resources under G.S. 20-139.1 to perform chemical analyses.

(3c) Commercial Drivers License (CDL). — A license issued by a state to an individual who resides in the state that authorizes the individual to drive a class of commercial motor vehicle. A "nonresident commercial drivers license (NRCDL)" is issued by a state to an individual who resides in a foreign jurisdiction.

(3d) Commercial Motor Vehicle. — Any of the following motor vehicles that are designed or used to transport passengers or property:
  a. A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
  b. A Class B motor vehicle.
  c. A Class C motor vehicle that meets either of the following descriptions:
    1. Is designed to transport 16 or more passengers, including the driver.
    2. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.
  d. Any other motor vehicle included by federal regulation in the definition of commercial motor vehicle pursuant to 49 U.S.C. Appdx. § 2716.

(4) Commissioner. — The Commissioner of Motor Vehicles.

(4a) Conviction. — A conviction for an offense committed in North Carolina or another state:
  a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:
    1. A final conviction of a criminal offense, including a no contest plea.
    2. A determination that a person is responsible for an infraction, including a no contest plea.
    3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
    4. A third or subsequent prayer for judgment continued within any five-year period.
  b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(5) Dealer. — Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers or semitrailers in this State, having an established place of business in this State and being subject to the tax levied by G.S. 105-89.

The terms "motor vehicle dealer," "new motor vehicle dealer," and "used motor vehicle dealer" shall have the meaning set forth in G.S. 20-286.

(5a) Disqualification. — A withdrawal of the privilege to drive a commercial motor vehicle.

(6) Division. — The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(7) Driver. — The operator of a vehicle, as defined in subdivision (25). The terms "driver" and "operator" and their cognates are synonymous.

(7a) Employer. — Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(8) Essential Parts. — All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(9) Established Place of Business. — Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading, and selling motor vehicles is or will be carried on and at which the books, records, and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

(10) Explosives. — Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(11) Farm Tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(12) Foreign Vehicle. — Every vehicle of a type required to be registered hereunder brought into this State from another state, territory, or country, other than in the ordinary

course of business, by or through a manufacturer or dealer and not registered in this State.

(12a) Gross Vehicle Weight Rating (GVWR). — The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units.

(12b) Hazardous Materials. — Materials designated as hazardous by the United States Secretary of Transportation under 49 U.S.C. § 1803.

(13) Highway. — The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" and their cognates are synonymous.

(14) House Trailer. — Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle.

(14a) Impairing Substance. — Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

(15) Implement of Husbandry. — Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(16) Intersection. — The area embraced within the prolongation of the lateral curblines or, if none, then the lateral edge of roadway lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(17) License. — Any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:

a. Any temporary license or learner's permit;
b. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
c. Any nonresident's operating privilege.

(18) Local Authorities. — Every county, municipality, or other territorial district with a local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

(19) Manufacturer. — Every person, resident, or nonresident of this State, who manufactures or assembles motor vehicles.

(20) Manufacturer's Certificate. — A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle

in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.

(21) Metal Tire. — Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(21a) Moped. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(22) Motorcycle. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(23) Motor Vehicle. — Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1.

(24) Nonresident. — Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. — Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.
b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
c. Second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.
e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

(25) Operator. — A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms "operator" and "driver" and their cognates are synonymous.

(25a) Out of Service Order. — A temporary prohibition against driving a commercial motor vehicle.

(26) Owner. — A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose

of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

(27) Passenger Vehicles. —

a. Excursion passenger vehicles. — Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. — Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. — Vehicles operated under a franchise certificate issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.

d. Motorcycles. — Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. — Vehicles having two or three wheels and operable pedals and equipped with a motor which does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. — A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. — A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. — A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. — Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. — Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. — All other passenger vehicles not included in the above definitions.

(28) Person. — Every individual, firm, partnership, association, corporation, governmental agency, or combination thereof of whatsoever form or character.

(29) Pneumatic Tire. — Every tire in which compressed air is designed to support the load.

(30) Private Road or Driveway. — Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(31) Property-Hauling Vehicles. —

a. Exempt for-hire vehicles. — Vehicles used for the transportation of property for hire but not licensed as common carriers or contract carriers of property under franchise certificates or permits issued by the Utilities Commission or by the Interstate Commerce Commission; provided, that the term "for hire" shall include every arrangement by which the owner of a vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the following exemptions:

1. The transportation of farm crops or products, including logs, bark, pulp, and tannic acid wood delivered from farms and forest to the first or primary market, and the transportation of wood chips from the place where wood has been converted into chips to their first or primary market.
2. The transportation of perishable foods which are still owned by the grower while being delivered to the first or primary market by an operator who has not more than one truck, truck-tractor, or trailer in a for-hire operation.
3. The transportation of merchandise hauled for neighborhood farmers incidentally and not as a regular business in going to and from farms and primary markets.
4. The transportation of T.V.A. or A.A.A. phosphate and/or agricultural limestone in bulk which is furnished as a grant of aid under the United States Agricultural Adjustment Administration.
5. The transportation of fuel for the exclusive use of the public schools of the State.

6. Vehicles whose sole operation in carrying the property of others is limited to the transportation of the United States mail pursuant to a contract, or the extension or renewal of such contract.
7. Vehicles leased for a term of one year or more to the same person when used exclusively by such person in transporting his own property.

b. Common carrier of property vehicles. — Vehicles used for the transportation of property certified by the Utilities Commission or the Interstate Commerce Commission as common carriers.

c. Private hauler vehicles. — Vehicles used for the transportation of property not falling within one of the above-defined classifications; provided, self-propelled vehicles equipped with permanent living and sleeping facilities used for camping activities shall be classified as private passenger vehicles.

d. Semitrailers. — Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.

e. Trailers. — Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including "pole trailers" or a pair of wheels used primarily to balance a load rather than for purposes of transportation.

f. Contract carrier of property vehicles. — Vehicles used for the transportation of property under a franchise permit of a regulated contract carrier issued by the Utilities Commission or the Interstate Commerce Commission.

(31a) Provisional Licensee. — A person under the age of 18 years.

(32) Public Vehicular Area. — Any area within the State of North Carolina that is generally open to and used by the public for vehicular traffic, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of:

a. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions; or

b. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space for customers, patrons, or the public; or

c. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13.)

The term "public vehicular area" shall also include any beach area used by the public for vehicular traffic as well as any road opened to vehicular traffic within or leading to a subdivision for use by subdivision residents, their guests, and members of the public, whether or not the subdivision roads have been offered for dedication to the public. The term "public vehicular area" shall not be construed to mean any private property not generally open to and used by the public.

(32a) Regular Drivers License. — A license to drive a commercial motor vehicle that is exempt from the commercial drivers license requirements or a noncommercial motor vehicle.

(33)(a) Flood Vehicle. — A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

(b) Non-U.S.A. Vehicle. — A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

(c) Reconstructed Vehicle. — A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

(d) Salvage Motor Vehicle. — Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

(e) Salvage Rebuilt Vehicle. — A salvage vehicle that has been rebuilt for title and registration.

(f) Junk Vehicle. — A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(33a) Relevant Time after the Driving. — Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

(33b) Reportable Accident. — An accident or collision involving a motor vehicle that results in either of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars ($1,000) or more.

(34) Resident. — Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State.

(35) Residential District. — The territory prescribed as such by ordinance of the Department of Transportation.

(36) Revocation or Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(37) Road Tractors. — Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(38) Roadway. — That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(39) Safety Zone. — Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(40) Security Agreement. — Written agreement which reserves or creates a security interest.

(41) Security Interest. — An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally.

(41a) Serious Traffic Violation. — A conviction of one of the following offenses when operating a commercial motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.

b. Careless and reckless driving.

c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.

d. Improper or erratic lane changes.

e. Following the vehicle ahead too closely.

(42) Solid Tire. — Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(43) Specially Constructed Vehicles. — Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.

(44) Special Mobile Equipment. — Any of the following:

a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus, is driven on the highway only to get to and from a nonhighway job, and is not designed or used primarily for the transportation of persons or property.

b. A vehicle that has permanently attached special equipment and is used only for parade purposes.

c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.

(45) State. — A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, or a province of Canada.

(46) Street. — A highway, as defined in subdivision (13). The terms "highway" and "street" and their cognates are synonymous.

(47) Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(48) Truck Tractors. — Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(48a) Under the Influence of an Impairing Substance. — The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

(49) Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment.

(50) Wreckers. — Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed. (1973, c. 1330, s. 1; 1975, cc. 94, 208; c. 716, s. 5; c. 743; c. 859, s. 1; 1977, c. 313; c. 464, s. 34; 1979, c. 39; c. 423, s. 1; c. 574, ss. 1-4; c. 667, s. 1; c. 680; 1981, c. 606, s. 3; c. 792, s. 2; 1983, c. 435, s. 8; 1983 (Reg. Sess., 1984), c. 1101, ss. 1-3; 1985, c. 509, s. 6; 1987, c. 607, s. 2; c. 658, s. 1; 1987 (Reg. Sess., 1988), c. 1069; c. 1105, s. 1; c. 1112, ss. 1-3; 1989, c. 455, s. 1; c. 727, s. 219(1); c. 771, s. 1; 1991, c. 449, s. 2; c. 726, ss. 1-4; 1991 (Reg. Sess., 1992), c. 1015, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 22; 1995, c. 191, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, added subdivisions (27)d3. and (27)d4.

The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, added subdivision (33b).

CASE NOTES

A mobile home is a motor vehicle, etc. —

It is clear under North Carolina law that a mobile home is a“motor vehicle” for purposes of the statutes dealing with registration and ownership of motor vehicles. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

Public Vehicular Area. —

Area where an accident between plaintiff and defendant’s truck occurred was a public vehicular area and not a roadway. The accident occurred in the traffic lane of a parking lot generally open to and used by the public for vehicular traffic upon the premises of a business establishment which provided parking space for its customers. Although the lot was held open for use by the public, there was no evidence that the general public had a legally enforceable right to use the lot. Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993).

Street in mobile home park, owned by one individual who had divided the property into lots for lease, that was not marked as private, and was available for use by residents, their guests and other visitors, was a public vehicular area within the meaning of subsection (32). State v. Turner, 117 N.C. App. 457, 451 S.E.2d 19 (1994).

In driving while impaired (DWI) prosecution, it was reversible error to instruct that club’s parking lot was a public vehicular area as a matter of law as this removed an essential element of the offense charged from the jury’s consideration. State v. Snyder, 118 N.C. App. 540, 455 S.E.2d 914 (1995).

Quoted in McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487, cert. denied, 337 N.C. 694, 448 S.E.2d 528 (1994).

Cited in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994); State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610, cert. denied, 337 N.C. 805, 449 S.E.2d 751 (1994).

OPINIONS OF ATTORNEY GENERAL

Trailers designed to run upon the highways and pulled by a self-propelled vehicle are motor vehicles for the purposes of this Chapter. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm’r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

ARTICLE 2.

Uniform Driver’s License Act.

§ 20-7. Issuance and renewal of drivers licenses.

(a) License Required. — To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. — A Class A license authorizes the holder to drive any of the following:
   a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
   b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. — A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. — A Class C license authorizes the holder to drive any of the following:
   a. A Class C motor vehicle that is not a commercial motor vehicle.
   b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 30 days after becoming a resident.

(a1) Motorcycles and Mopeds. — To drive a motorcycle, a person must have a drivers license and a motorcycle endorsement. To obtain a motorcycle endorsement, a person must demonstrate competence to drive a motorcycle by passing a road test and a written or oral test concerning a motorcycle and must pay the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle endorsement is required to drive a moped.

(b) Repealed by Session Laws 1993, c. 368, s. 1, c. 533, s. 12, effective January 1, 1995.

(b1) Application. — To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following information:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's social security number.

(6) The applicant's signature.

The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93- 579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the drivers license laws and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii).

(c) Tests. — To demonstrate physical and mental ability, a person must pass an examination. The examination may include road tests, vision tests, oral tests, and, in the case of literate applicants, written tests, as the Division may require. The tests must ensure that an applicant recognizes the handicapped international symbol of access, as defined in G.S. 20-37.5. The Division may not require a person who applies to renew a license that has not expired to take a written test or a road test unless one or more of the following applies:

(1) The person has been convicted of a traffic violation since the person's license was last issued.

(2) The applicant suffers from a mental or physical condition that impairs the person's ability to drive a motor vehicle.

The Division may not require a person who is at least 60 years old to parallel park a motor vehicle as part of a road test.

(c1) Insurance. — The Division may not issue a drivers license to a person until the person has furnished proof of financial responsibility. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

The requirement of furnishing proof of financial responsibility does not apply to a person who applies for a renewal of his or her drivers license.

Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(d) Repealed by Session Laws 1993, c. 368, s. 1, effective January 1, 1995.

(e) Restrictions. — The Division may impose any restriction it finds advisable on a drivers license. It is unlawful for the holder of a restricted license to operate a motor vehicle without complying with the restriction and is the equivalent of operating a motor vehicle without a license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Division. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either restricted or unrestricted, to any person deemed to be incapable of safely operating a motor vehicle. This subsection does not prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) Expiration and Temporary License. — The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.

A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed. A person may apply to the Division to renew a license during the 60-day period before the license expires. The Division may not accept an application for renewal made before the 60-day period begins.

Any person serving in the armed forces of the United States on active duty and holding a valid drivers license properly issued under this section and stationed outside the State of North Carolina may renew the license by making application to the Division by mail. Any other person, except a nonresident, who holds a valid drivers license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the

Division by mail. For purposes of this section "temporarily" shall mean not less than 30 days continuous absence from North Carolina. In either case, the Division may waive the examination and color photograph otherwise required for the renewal of a drivers license, and may impose in lieu thereof any conditions it considers appropriate to each particular application. A license renewed by mail is a temporary license that expires 30 days after the person to whom it is issued returns to this State.

(g) Repealed by Session Laws 1979, c. 667, s. 6.

(h) Repealed by Session Laws 1979, c. 113, s. 1.

(i) Fees. — The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

Class of Regular License	Fee for Each Year
Class A	$3.75
Class B	3.75
Class C	2.50

The fee for a motorcycle endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The appropriate fee must be paid before a person receives a regular drivers license or an endorsement.

(i1) Restoration Fee. — Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars ($25.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars ($50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds five million dollars ($5,000,000), and shall pay a restoration fee of twenty-five dollars ($25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds five million dollars ($5,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of five million dollars ($5,000,000).

(j) Highway Fund. — The fees collected under this section and G.S. 20-14 shall be placed in the Highway Fund.

(k) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(*l*) Learner's Permit. — Any person who except for lack of instruction in operating a motor vehicle would be qualified to obtain a drivers license under this Article may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is ten dollars ($10.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder.

(*l*-1) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(m) Instruction Permit. — The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to any of the following applicants:

(1) An applicant who is less than 18 years old and is enrolled in a drivers education program that is approved by the State Superintendent of Public Instruction and is offered at a public high school, a nonpublic secondary school, or a licensed drivers training school.

(2) An applicant for certification under G.S. 20-218 as a school bus driver.

A restricted instruction permit authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division. The restrictions the Division may impose on a permit include restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee. A restricted instruction permit is not required to have a distinguishing number or a picture of the person to whom the permit is issued.

(n) Format. — A drivers license issued by the Division must be tamperproof and must contain all of the following information:

(1) An identification of this State as the issuer of the license.
(2) The license holder's full name.
(3) The license holder's residence address.
(4) A color photograph of the license holder, taken by the Division.
(5) A physical description of the license holder, including sex, height, eye color, and hair color.
(6) The license holder's date of birth.
(7) The license holder's social security number or another identifying number assigned by the Division.
(8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
(9) The license holder's signature.
(10) The date the license was issued and the date the license expires.

The Commissioner may waive the requirement of a color photograph on a license if the license holder proves to the satisfaction of the Commissioner that taking the photograph would violate the license holder's religious convictions. In taking photographs of license holders, the Division must distinguish between license holders who are less than 21 years old and license holders who are at least 21 years old by using different color backgrounds for each group. The Division shall determine the different colors to be used.

At the request of an applicant for a drivers license, a license issued to the applicant must contain the applicant's race.

(o) Repealed by Session Laws 1991, c. 726, s. 5, effective October 1, 1991.

(p) The Division must give the clerk of superior court in each county at least 50 copies of the driver license handbook free of charge. The clerk must give a copy to a person who requests it. (1935, c. 52, s. 2; 1943, c. 649, s. 1; c. 787, s. 1; 1947, c. 1067, s. 10; 1949, c. 583, ss. 9, 10; c. 826, ss. 1, 2; 1951, c. 542, ss. 1, 2; c. 1196, ss. 1-3; 1953, cc. 839, 1284, 1311; 1955, c. 1187, ss. 2-6; 1957, c. 1225; 1963, cc. 754, 1007, 1022; 1965, c. 410, s. 5; 1967, c. 509; 1969, c. 183; c. 783, s. 1; c. 865; 1971, c. 158; 1973, cc. 73, 705; c. 1057, s. 1; 1975, c. 162, s. 1; c. 295; c. 296, ss. 1, 2; c. 684; c. 716, s. 5; c. 841; c. 875, s. 4; c. 879, s. 46; 1977, c. 6; c. 340, s. 3; c. 865, ss. 1, 3; 1979, c. 37, s. 1; c. 113; c. 178, s. 2; c. 667, ss. 3-11, 41; c. 678, ss. 1-3; c. 801, ss. 5, 6; 1981, c. 42; c. 690, ss. 8-10; c. 792, s. 3; 1981 (Reg. Sess., 1982), c. 1257, s. 1; 1983, c. 443, s. 1; 1985, c. 141, s. 4; c. 682, ss. 1, 2; 1987, c. 869, ss. 10, 11; 1989, c. 436, ss. 1, 2; c. 771, s. 5; c. 786, s. 4; 1991, c. 478, s. 1; c. 689, s. 325; c. 726, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 27; c. 1030, s. 10; 1993, c. 368, s. 1; c. 533, ss. 2, 3, 12; 1993 (Reg. Sess., 1994), c. 595, ss. 1, 2; c. 750, s. 1; c. 761, s. 1.1.)

Effect of Amendments. —

Session Laws 1993 (Reg. Sess., 1994), c. 595, s. 1, effective July 1, 1994, in the fourth paragraph of subsection (f) deleted "and who must take the written examination" preceding "pursuant", and substituted "issued a renewed license unless such person has furnished the" for "required to furnish". Because Session Laws 1993 (Reg. Sess., 1994), c. 595, s. 3 provides that s. 1 of that act expires December 31, 1994, the amendment by s. 1 is not set out.

Session Laws 1993 (Reg. Sess., 1994), c. 595, s. 2, effective January 1, 1995, in the fifth paragraph of subsection (c1) substituted "his or her drivers license" for "his drivers license and who is not required to take the written examination".

Session Laws 1993 (Reg. Sess., 1994), c. 750, s. 1, effective January 1, 1995, in subsection (a), in the first sentence, substituted "the vehicle and must carry the license while driving the vehicle" for "that vehicle" at the end; redesignated former subsection (c) as present subsection (b1); in subsection (b1) deleted "and Tests" from the end of the section catchline, created the second and third sentences by adding the period, and deleted the former fourth sentence which read "The Division shall note an endorsement on the face of a drivers license", and added the remaining language of the subsection; added the subsection (c) designation and catchline; in subsection (e) deleted the former second sentence which read "A restriction shall be noted on the face of the license"; and rewrote subsection (n).

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 1.1, effective July 16, 1994, added subsection (p).

CASE NOTES

Probable Cause for Arrest. — Where trooper could have placed defendant under arrest for not carrying his driver's license, but merely choose to ask defendant to step back to the patrol car so that he could check defendant's license information and so that he could further investigate defendant's intoxication based upon defendant's unsteady movements and smell of alcohol and after defendant failed field sobriety tests he was placed under arrest and advised of his rights, the seizure was constitutionally permissible and there was sufficient probable cause for arrest. State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

§ 20-9. What persons shall not be licensed.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 18.17, provides for the establishment of a Commission to Study the Drivers License Medical Evaluation Program, which shall make a final report to the 1997 General Assembly.

§ 20-11. Application of minors.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Presumption of Control. — Subsection (b) creates a presumption that the statutorily approved person occupying the front passenger seat has the right to control and direct the operation of the vehicle; thus, any negligence of the minor defendant could be imputed to his parent. Stanfield v. Tilghman ex rel. Stanfield, 117 N.C. App. 292, 450 S.E.2d 751 (1994), cert. granted, 339 N.C. 616, 454 S.E.2d 258 (1995).

§ 20-13.2. Grounds for revoking provisional license.

(a) The Division must revoke the license of a person convicted of violating the provisions of G.S. 20-138.3 upon receipt of a record of the licensee's conviction.

(b) If a person is convicted of an offense involving impaired driving and the offense occurs while he is less than 21 years old, his license must be revoked under this section in addition to any other revocation required or authorized by law.

(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S. 20-16.2 while he is less than 21 years old, his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal.

(d) The length of revocation under this section shall be one year. Revocations under this section run concurrently with any other revocations.

(e) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1983, c. 435, s. 33; 1987, c. 869, s. 12; 1989, c. 436, s. 3; 1993, c. 285, s. 8; 1995, c. 506, ss. 3, 4, 5.)

Editor's Note. — Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Effect of Amendments. — The 1995 amendment, effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date, substituted "less than 21 years old" for "a provisional licensee" in subsections (b) and (c), and rewrote subsection (d).

§ 20-15.1. Revocations when licensing privileges forfeited.

The Division shall revoke the license of a person whose licensing privileges have been forfeited under G.S. 15A-1331A, 50-13.12, and 110-142.2. If a revocation period set by this Chapter is longer than the revocation period resulting from the forfeiture of licensing privileges, the revocation period in this Chapter applies. (1994, Ex. Sess., c. 20, s. 2; 1995, c. 538, s. 2(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 20, s. 6 makes this section effective May 1, 1994, and applicable to offenses committed on or after that date.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to child support owed on or after that date, deleted "after conviction of a crime" from the end of the catchline, and inserted "50-13.12, and 110-142.2" following "G.S. 15A-1331A".

§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. — Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged must be taken before a chemical analyst authorized to administer a test of a person's breath, who must inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 10 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 10 days if:

  a. The test reveals an alcohol concentration of 0.08 or more; or

  b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. — Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. — If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis; Procedure upon Refusal. — The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. — Upon receipt of a properly executed affidavit required by subsection (c), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent offense;
(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense;
(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;
(4) The person was notified of his or her rights as required by subsection (a); and
(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that conditions (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. — If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. — If the revocation is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. — A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid driver's license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
  a. Other than by conviction; or
  b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; and

(7) The person's license has been revoked for at least six months for the refusal.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing must be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing must be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. — When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. — A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer must afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person must confirm the request in writing and must be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 10 days if:

  a. The test reveals an alcohol concentration of 0.08 or more; or

  b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant. (1963, c. 966, s. 1; 1965, c. 1165; 1969, c. 1074, s. 1; 1971, c. 619, ss. 3-6; 1973, c. 206, ss. 1, 2; cc. 824, 914; 1975, c. 716, s. 5; 1977, c. 812; 1979, c. 423, s. 2; 1979, 2nd Sess., c. 1160; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 87; c. 435, s. 11; 1983 (Reg. Sess., 1984), c. 1101, ss. 5-8; 1987, c. 797, s. 3; 1987 (Reg. Sess., 1988), c. 1037, ss. 76, 77; 1989, c. 771, ss. 13, 14; 1991, c. 689, s. 233.1(c); 1993, c. 285, ss. 3, 4; 1995, c. 163, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 5, 1995, made the section gender neutral throughout; in subdivision (a)(5) substituted "choose a qualified person to" for "have a qualified person of his own choosing"; in the last paragraph in subsection (a) deleted "and the charging officer designates a chemical analysis of the blood of the person charged" following "breath" and added the last sentence; in subsection (c), substituted "If the person refuses to submit to the chemical analysis" for "Then" in the third sentence and added the last sentence; and made stylistic changes throughout the section.

CASE NOTES

I. In General.
II. Administration of Test.
III. Revocation of License for Refusal to Take Test.
IV. Evidence in Prosecution for Drunken Driving.

I. IN GENERAL.

Though this section must be read in conjunction with § 20-139.1 to determine the procedures governing the administering of chemical analyses, this section, and that statute alone, sets forth the procedures governing notification of rights pursuant to a chemical analysis. Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542, temporary stay granted pending appeal, 338 N.C. 312, 449 S.E.2d 473 (1994).

Unconscious Driver. —

Where defendant was already sedated and unconscious when a police officer arrived at a hospital to obtain a blood sample for chemical analysis such that officer did not advise defendant of his right to refuse the test, the trial court properly concluded that defendant was rendered unconscious by the doctors based solely on a medical decision to treat him, that the officer had nothing to do with this decision, and that defendant's statutory rights were not violated in that the officer who conducted the chemical analysis complied with the requirements of this section and § 20-139.1. State v. Garcia-Lorenzo, 110 N.C. App. 319, 430 S.E.2d 290 (1993).

Reasonable Grounds Synonymous with Probable Cause. — In determining whether a charging officer had reasonable grounds to believe a petitioner committed an implied consent offense within the meaning of this section, the term reasonable grounds should be viewed as synonymous with probable cause. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

Relation to DWI charge. — The decision by Division of Motor Vehicles (DMV) to rescind the revocation of defendant's driver's license was independent of, and inconsequential to, defendant's criminal trial for driving while impaired (DWI). State v. O'Rourke, 114 N.C. App. 435, 442 S.E.2d 137 (1994).

Applied in State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993); State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994).

Cited in Melton v. Hodges, 114 N.C. App. 795, 443 S.E.2d 83 (1994).

II. ADMINISTRATION OF TEST.

Right to Have a Witness to Breathalyzer Test. —

Where officer refused defendant's unequivocal request that his wife be permitted to observe his taking of breathalyzer test, the trial court erred in admitting the results of the breathalyzer test at trial; fact that defendant later did take the breathalyzer, after he was first refused permission to have his wife witness the test, could not be construed to be a waiver of his right to have a witness. State v. Myers, 118 N.C. App. 452, 455 S.E.2d 492 (1995).

III. REVOCATION OF LICENSE FOR REFUSAL TO TAKE TEST.

But Is Sufficient in Absence of Timely Objection. —

Trooper's failure to comply with subsection (a) in the face of petitioner's refusal to submit resulted in the rescission of the revocation of petitioner's license. Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542, temporary stay granted pending appeal, 338 N.C. 312, 449 S.E.2d 473 (1994).

IV. EVIDENCE IN PROSECUTION FOR DRUNKEN DRIVING.

Consideration of Alcosensor Results. — It is permissible to consider the results of alcosensor test in determining whether trooper had reasonable grounds to believe petitioner had committed an implied consent offense. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

Reasonable Grounds Shown. — The evidence surrounding petitioner's accident, including the reason for its occurrence, taken with the odor of alcohol about petitioner, her mumbled speech, her admission that she had been drinking liquor earlier, and the results of the alcosensor test were clearly sufficient to give trooper reasonable grounds to believe that petitioner had been driving while impaired. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by Commission for Health Services; use of test results or refusal.

CASE NOTES

Consideration of Alcosensor Results. — It is permissible to consider the results of alcosensor test in determining whether trooper had reasonable grounds to believe petitioner had committed an implied consent offense. Moore v. Hodges, 116 N.C. App. 727, 449 S.E.2d 218 (1994).

§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1 provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 26.5, provides that amounts collected under section (j) of this section and designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources, for fiscal years 1993-94 and 1994-95 shall not revert to the General Fund unless the amounts exceed the amounts appropriated for those years, and beginning with the 1995-96 fiscal year, funds not needed for that program shall be transferred annually to the Governor's Highway Safety Program for grants to local law enforcement agencies for training and enforcement of the laws on driving while impaired.

Session Laws 1995, c. 324, s. 28.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

§ 20-17. Mandatory revocation of license by Division.

(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

- (1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.
- (2) Either of the following impaired driving offenses:
  - a. Impaired driving under G.S. 20-138.1.
  - b. Impaired driving under G.S. 20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.
- (3) Any felony in the commission of which a motor vehicle is used.
- (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).
- (5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction upon two charges of reckless driving committed within a period of 12 months.

(7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Death by vehicle as defined in G.S. 20-141.4.

(10) Speeding in excess of 55 miles per hour and at least 15 miles per hour over the legal limit in violation of G.S. 20-141(j).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7.

(b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division shall ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110-142.2 or G.S. 50-13.12. The obligor shall not be entitled to any other hearing before the Division as a result of the revocation of his license pursuant to G.S. 110-142.2 or G.S. 50-13.12. (1935, c. 52, s. 12; 1947, c. 1067, s. 14; 1967, c. 1098, s. 2; 1971, c. 619, s. 7; 1973, c. 18, s. 1; c. 1081, s. 3; c. 1330, s. 2; 1975, c. 716, s. 5; c. 831; 1979, c. 667, ss. 20, 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 15; 1989, c. 771, s. 11; 1991, c. 726, s. 7; 1993 (Reg. Sess., 1994), c. 761, s. 1; 1995, c. 506, s. 7; c. 538, s. 2(b).)

Editor's Note. — Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

The subsection (b) designation was assigned by the Revisor of Statutes, the designation in Session Laws 1995, c. 538, s. 2(b) having been subdivision (12); the subsection (a) designation was added as well.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "0.08" for "0.10" near the end of subdivision (2)b.

Session Laws 1995, c. 506, s. 7, effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date, added subdivision (12).

Session Laws 1995, c. 538, s. 2(b), effective January 1, 1996, and applicable to child support owed on or after that date, added subsection (b).

§ 20-17.6. Restoration of a license after a conviction of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.

(a) Scope. — This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

(1) G.S. 20-138.1, driving while impaired (DWI).

(2) G.S. 20-138.2, commercial DWI, if the person's license was revoked under G.S. 20-17(2).
(3) G.S. 20-138.3, driving while less than 21 years old after consuming alcohol or drugs.

(b) Requirement for Restoring License. — The Division must receive a certificate of completion for a person who is subject to this section before the Division can restore that person's license. The revocation period for a person who is subject to this section is extended until the Division receives the certificate of completion.

(c) Certificate of Completion. — To obtain a certificate of completion, a person must have a substance abuse assessment and, depending on the results of the assessment, must complete either an alcohol and drug education traffic (ADET) school or a substance abuse treatment program. The substance abuse assessment must be conducted by one of the entities authorized by the Department of Human Resources to conduct assessments. G.S. 122C-142.1 describes the procedure for obtaining a certificate of completion.

(d) Notice of Requirement. — When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the local area mental health, developmental disabilities, and substance abuse program for a list of agencies and entities in the person's area that are authorized to make a substance abuse assessment and provide the education or treatment needed to obtain a certificate of completion.

(e) Effect on Limited Driving Privileges. — A person who is subject to this section is not eligible for limited driving privileges if the revocation period for the offense that caused the person to become subject to this section has ended and the person's license remains revoked only because the Division has not obtained a certificate of completion for that person. The issuance of limited driving privileges during the revocation period for the offense that caused the person to become subject to this section is governed by the statutes that apply to that offense. (1995, c. 496, ss. 1, 11, 12.)

Editor's Note. — Session Laws 1995, c. 496, s. 14, provides that this section becomes effective January 1, 1996, and is applicable to offenses occurring on or after that date, and that ss. 11 and 12, which substituted "less than 21 years old" for "a provisional licensee" in the catchline and in subdivision (a)(3), would become effective only if House Bill 353 of the 1995 General Assembly was enacted. House Bill 353 was ratified as Session Laws 1995, c. 506, on July 28, 1995.

§ 20-19. Period of suspension or revocation.

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1935, c. 52, s. 13; 1947, c. 1067, s. 15; 1951, c. 1202, ss. 2-4; 1953, c. 1138; 1955, c. 1187, ss. 13, 17, 18; 1957, c. 499, s. 2; c. 515, s. 1; 1959, c. 1264, s. 11A; 1969, c. 242; 1971, c. 619, ss. 8-10; 1973, c. 1445, ss. 1-4; 1975, c. 716, s. 5; 1979, c. 903, ss. 4-6; 1981, c. 412, s. 4; c. 747, ss. 34, 66; 1983, c. 435, s. 17; 1983 (Reg. Sess., 1984), c. 1101, s. 18; 1987, c. 869, s. 12; 1989, c. 436, s. 5; 1995, c. 506, s. 8.)

Editor's Note. — Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Effect of Amendments. — The 1995 amendment, effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date, added subsection (g1).

CASE NOTES

The purpose of this section is to provide a uniform standard period for the withholding of the privilege to operate a motor vehicle following certain offenses. Wagoner v. Hiatt, 111 N.C. App. 448, 432 S.E.2d 417 (1993).

Subsections (d) and (j) of this section must be read together, giving consideration both to the legislative intent of ensuring standard penalties for the same offenses and to the policy of preventing circumvention of this section. Wagoner v. Hiatt, 111 N.C. App. 448, 432 S.E.2d 417 (1993).

§ 20-24. When court or child support enforcement agency to forward license to Division and report convictions, child support delinquencies, and prayers for judgment continued.

(a) License. — A court that convicts a person of an offense that requires revocation of the person's drivers license or revokes a person's drivers license pursuant to G.S. 50-13.12 shall require the person to give the court any regular or commercial drivers license issued to that person. A court that convicts a person of an offense that requires disqualification of the person but would not require revocation of a regular drivers license issued to that person shall require the person to give the court any Class A or Class B regular drivers license and any commercial drivers license issued to that person.

The clerk of court in a non-IV-D case, and the child support enforcement agency in a IV-D case, shall accept a drivers license required to be given to the court under this subsection. A clerk of court or the child support enforcement agency who receives a drivers license shall give the person whose license is received a copy of a dated receipt for the license. The receipt must be on a form approved by the Commissioner. A revocation or disqualification for which a license is received under this subsection is effective as of the date on the receipt for the license.

The clerk of court or the child support enforcement agency shall notify the Division of a license received under this subsection either by forwarding to the Division the license, a record of the conviction for which the license was received, a copy of the court order revoking the license for failure to pay child support for which the license was received, and the original dated receipt for the license or by electronically sending to the Division the information on the license, the record of conviction or court order revoking the license for failure to pay child support, and the receipt given for the license. The clerk of court or the child support enforcement agency must forward the required items unless the Commissioner has given the clerk of court or the child support enforcement agency approval to notify the Division electronically. If the clerk of court or the child support enforcement agency notifies the Division electronically, the clerk of court or the child support enforcement agency must destroy a license received after sending to the Division the required information. The clerk of court or the child support enforcement agency shall notify the Division within 30 days after entry of the conviction or court order revoking the license for failure to pay child support for which the license was received.

(b) Convictions, Court Orders of Drivers License Revocations, and PJCs. — The clerk of court shall send the Division a record of any of the following:

(1) A conviction of a violation of a law regulating the operation of a vehicle.

(2) A conviction for which the convicted person is placed on probation and a condition of probation is that the person not drive a motor vehicle for a period of time, stating the period of time for which the condition applies.

(3) A conviction of a felony in the commission of which a motor vehicle is used, when the judgment includes a finding that a motor vehicle was used in the commission of the felony.

(4) A conviction that requires revocation of the drivers license of the person convicted and is not otherwise reported under subdivision (1).

(4a) A court order revoking drivers license pursuant to G.S. 50-13.12.

(5) An order entering prayer for judgment continued in a case involving an alleged violation of a law regulating the operation of a vehicle.

The child support enforcement agency shall send the Division a record of any court order revoking drivers license pursuant to G.S. 110-142.2(a)(1).

With the approval of the Commissioner, the clerk of court or the child support enforcement agency may forward a record of conviction, court order revoking drivers license, or prayer for judgment continued to the Division by electronic data processing means.

(b1) In any case in which the Division, for any reason, does not receive a record of a conviction or a prayer for judgment continued until more than one year after the date it is entered, the Division may, in its discretion, substitute a period of probation for all or any part of a revocation or disqualification required because of the conviction or prayer for judgment continued.

(c) Repealed by Session Laws 1991, c. 726, s. 10.

(d) Scope. — This Article governs drivers license revocation and disqualification. A drivers license may not be revoked and a person may not be disqualified except in accordance with this Article.

(e) Special Information. — A judgment for a conviction for an offense for which special information is required under this subsection shall, when appropriate, include a finding of the special information. The convictions for which special information is required and the specific information required is as follows:

(1) Homicide. — If a conviction of homicide involves impaired driving, the judgment must indicate that fact.
(2) G.S. 20-138.1, Driving While Impaired. — If a conviction under G.S. 20-138.1 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-138.1 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.
(3) G.S. 20-138.2, Driving Commercial Motor Vehicle While Impaired. — If the commercial motor vehicle involved in an offense under G.S. 20-138.2 was transporting a hazardous material required to be placarded, a judgment for that offense must indicate that fact.
(4) G.S. 20-166, Hit and Run. — If a conviction under G.S. 20-166 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-166 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.
(5) Felony Using Commercial Motor Vehicle. — If a conviction of a felony in which a commercial motor vehicle was used involves the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance, the judgment must indicate that fact. If a commercial motor vehicle used in a felony was transporting a hazardous substance required to be placarded, the judgment for that felony must indicate that fact. (1935, c. 52, s. 18; 1949, c. 373, ss. 3, 4; 1955, c. 1187, s. 14; 1959, c. 47; 1965, c. 38; 1973, c. 19; 1975, cc. 46, 445; c. 716, s. 5; c. 871, s. 1; 1979, c. 667, s. 41; 1981, c. 416; c. 839; 1983, c. 294, s. 5; c. 435, s. 19; 1985, c. 764, s. 18; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 581, s. 1; c. 658, s. 2; 1989, c. 771, s. 10; 1991, c. 726, s. 10; 1993, c. 533, s. 7; 1995, c. 538, s. 2(c).)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to child support owed on or after that date, rewrote the catchline, which formerly read "When court to forward license to Division and report convictions and prayers for judgment continued"; and rewrote subsections (a) and (b).

§ 20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

(a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and he:
(1) failed to appear, after being notified to do so, when the case was called for a trial or hearing; or
(2) failed to pay a fine, penalty, or court costs ordered by the court.

Revocation orders entered under the authority of this section are effective on the sixtieth day after the order is mailed or personally delivered to the person.

(b) A license revoked under this section remains revoked until the person whose license has been revoked:

(1) disposes of the charge in the trial division in which he failed to appear when the case was last called for trial or hearing; or
(2) demonstrates to the court that he is not the person charged with the offense; or
(3) pays the penalty, fine, or costs ordered by the court; or
(4) demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted.

Upon receipt of notice from the court that the person has satisfied the conditions of this subsection applicable to his case, the Division must restore the person's license as provided in subsection (c). In addition, if the person whose license is revoked is not a resident of this State, the Division may notify the driver licensing agency in the person's state of residence that the person's license to drive in this State has been revoked.

(b1) A defendant must be afforded an opportunity for a trial or a hearing within a reasonable time of the defendant's appearance. Upon motion of a defendant, the court must order that a hearing or a trial be heard within a reasonable time.

(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order and any entries on his driving record relating to it shall be deleted and the person does not have to pay the restoration fee set by G.S. 20-7(i1). For all other revocation orders issued pursuant to this section, G.S. 50-13.12 or G.S. 110-142.2, the person must pay the restoration fee and satisfy any other applicable requirements of this Article before the person may be relicensed.

(d) To facilitate the prompt return of licenses and to prevent unjustified charges of driving while license revoked, the clerk of court, upon request, must give the person a copy of the notice it sends to the Division to indicate that the person has complied with the conditions of subsection (b) applicable to his case. If the person complies with the condition before the effective date of the revocation, the notice must indicate that the person is eligible to drive if he is otherwise validly licensed.

(e) As used in this section and in G.S. 20-24.2, the word offense includes crimes and infractions created by this Chapter. (1985, c. 764, s. 19; 1985 (Reg. Sess., 1986), c. 852, ss. 4-6, 9, 17; 1987, c. 581, s. 4; 1991, c. 682, s. 4; 1993, c. 313, s. 1; 1995, c. 538, s. 2(d).)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to child support owed on or after that date, inserted "G.S. 50-13.12 or G.S. 110-142.2" and substituted "the person" for "he" in the last sentence in subsection (c).

CASE NOTES

Cited in White v. Williams, 111 N.C. App. 879, 433 S.E.2d 808 (1993).

§ 20-24.2. Court to report failure to appear or pay fine, penalty or costs.

CASE NOTES

Cited in White v. Williams, 111 N.C. App. 879, 433 S.E.2d 808 (1993).

§ 20-28. Unlawful to drive while license revoked or while disqualified.

(a) Driving While License Revoked. — Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. — A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 30 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 30 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 10 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3, effective October 1, 1994.

(c) When Person May Apply for License. — A person whose license has been revoked under this section for one year may apply for a license after 90 days. A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years. Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period. The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(d) Driving While Disqualified. — A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified. (1935, c. 52, s. 22; 1945, c. 635; 1947, c. 1067, s. 16; 1955, c. 1020, s. 1; c. 1152, s. 18; c. 1187, s. 20; 1957, c. 1046; 1959, c. 515; 1967, c. 447; 1973, c. 47, s. 2; cc. 71, 1132; 1975, c. 716, s. 5; 1979, c 377, ss. 1, 2; c. 667, s. 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 51; 1983 (Reg. Sess., 1984), c. 1101, s. 18A; 1989, c. 771, s. 4; 1991, c. 509, s. 2; c. 726, s. 12; 1993, c. 539, ss. 320-322; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, ss. 2, 3; 1995, c. 538, ss. 2(e), 2(f).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, deleted "other than permanently" following "revoked" in the first sentence of subsection (a), and repealed subsection (b).

The 1995 amendment, effective January 1, 1996, and applicable to child support owed on or after that date, in subsection (a) added "Except as provided in subsection (a1) of this section" to the beginning, and substituted "driving without a license" for "operating without a drivers license" at the end; and in subsection (a1) rewrote the introductory language, substituted "the person's" for "his" in subdivision (a1)(1), added subdivision (a1)(3) and made a related change.

§ 20-29. Surrender of license.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

§ 20-30. Violations of license or learner's permit provisions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-31. Making false affidavits perjury.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-34.1. Violations for wrongful issuance of a drivers license or a special identification card.

(a) An employee of the Division or of an agent of the Division who does any of the following commits a Class I felony:

(1) Charges or accepts any money or other thing of value, except the required fee, for the issuance of a drivers license or a special identification card.

(2) Knowing it is false, accepts false proof of identification submitted for a drivers license or a special identification card.

(3) Knowing it is false, enters false information concerning a drivers license or a special identification card in the records of the Division.

(b) Defenses Precluded. — The fact that the Division does not issue a license or a special identification card after an employee or an agent of the Division charges or accepts money or another thing of value for its issuance is not a defense to a criminal action under this section. It is not a defense to a criminal action under this section to show that the person who received or was intended to receive the license or special identification card was eligible for it.

(c) Dismissal. — An employee of the Division who violates this section shall be dismissed from employment and may not hold any public office or public employment in this State for five years after the violation. If a person who violates this section is an employee of the agent of the Division, the Division shall cancel the contract of the agent unless the agent dismisses that person. A person dismissed by an agent because of a violation of this section may not hold any public office or public employment in this State for five years after the violation. (1951, c. 211; 1975, c. 716, s. 5; 1979, c. 667, s. 41; 1993, c. 533, s. 8, c. 539, s. 1250; 1994, Ex. Sess., c. 14, s. 30.)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 30(a), effective October 1, 1994, repealed Session Laws 1993, c. 539, s. 1250, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), which would have amended this section effective October 1, 1994, as it read prior to amendment by Session Laws 1993, c. 533, s. 8, by substituting "Class I felony which may include" for former punishment provisions.

Effect of Amendments. — The 1994 Extra Session amendment by c. 14, s. 30(b), effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, substituted "Class I felony" for "Class J felony" in the introductory language of subsection (a).

§ 20-35. Penalties for violating Article; defense to driving without a license.

(a) Penalty. — A violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different punishment for the violation. If a statute in this Article sets a different punishment for a violation of the Article, the different punishment applies.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 4, effective October 1, 1994.

(c) Defenses. — A person may not be convicted of failing to carry a regular drivers license if, when tried for that offense, the person produces in court a regular drivers license issued to the person that was valid when the person was charged with the offense. A person may not be convicted of driving a motor vehicle without a regular drivers license if, when tried for that offense, the person shows all the following:

(1) That, at the time of the offense, the person had an expired license.
(2) The person renewed the expired license within 30 days after it expired and now has a drivers license.
(3) The person could not have been charged with driving without a license if the person had the renewed license when charged with the offense. (1935, c. 52, s. 29; 1991, c. 726, s. 14; 1993, c. 539, s. 324; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 4.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, substituted "violating Article; defense to driving without a license" for "misdemeanor" in the section catchline, rewrote subsection (a), repealed subsection (b), and inserted "Defenses. —" in subsection (c).

CASE NOTES

Cited in State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

ARTICLE 2A.

Afflicted, Disabled or Handicapped Persons.

§ 20-37.6. Parking privileges for handicapped drivers and passengers.

(a) General Parking. — Any vehicle that is driven by or is transporting a person who is handicapped and that displays a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard may be parked for unlimited periods in parking zones restricted as to the length of time parking is permitted. This provision has no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Any qualifying vehicle may park in spaces designated as restricted to vehicles driven by or transporting the handicapped.

(b) Handicapped Car Owners; Distinguishing License Plates. — If the handicapped person is a registered owner of a vehicle, the owner may apply for and display a distinguishing license plate. This license plate shall be issued for the normal fee applicable to standard license plates. Any vehicle owner who qualifies for a distinguishing license plate may also receive one removable windshield placard.

(c) Handicapped Drivers and Passengers; Distinguishing Placards. — A handicapped person may apply for the issuance of a removable windshield placard or a temporary removable windshield placard. Upon request, one additional placard may be issued to applicants who do not have a distinguishing license plate. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped persons may also apply. These organizations may receive one removable windshield placard for each transporting vehicle. When the removable windshield or temporary removable windshield placard is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (b) shall apply. The removable windshield placard or the temporary removable windshield placard shall be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle using a parking space allowed for handicapped persons. When there is no inside rearview mirror, or when the placard cannot reasonably be hung from the rearview mirror by the handicapped person, the placard shall be displayed on the driver's side of the dashboard. A removable windshield placard placed on a motorized wheelchair or similar vehicle shall be displayed in a clearly visible location. The Division shall establish procedures for the issuance of the placards and may charge a fee sufficient to pay the actual cost of issuance, but in no event less than five dollars ($5.00) per placard.

(c1) Application and Renewal; Physician's Certification. — The initial application for a distinguishing license plate, removable windshield placard, or temporary removable windshield placard shall be accompanied by a certification of a licensed physician, ophthalmologist, or optometrist or of the Division of Services for the Blind that the applicant is handicapped. The application for a temporary removable windshield placard shall contain additional certification to include the period of time the certifying authority determines the applicant will have the disability. Distinguishing license plates shall be renewed annually, but subsequent applications shall not require a medical certification that the applicant is handicapped. Removable windshield placards shall be renewed every five years, and the renewal shall require a medical recertification that the person is handicapped. Temporary removable windshield placards shall expire no later than six months after issuance.

(c2) Existing Placards; Expiration; Exchange for New Placards.— All existing placards shall expire on January 1, 1992. No person shall be convicted of parking in violation of this Article by reason of an expired placard if the defendant produces in court, at the time of trial on the illegal parking charge, an expired placard and a renewed placard issued within 30 days of the expiration date of the expired placard and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. Existing placards issued on or after July 1, 1989, may be exchanged without charge for the new placards.

(c3) It shall be unlawful to sell a distinguishing license plate, a removable windshield placard, or a temporary removable windshield placard issued pursuant to this section. A violation of this subsection shall be a Class 2 misdemeanor and may be punished pursuant to G.S. 20-176(c) and (c1).

(d) Designation of Parking Spaces. — Designation of parking spaces for handicapped persons on streets and public vehicular areas shall comply with G.S. 136-30. A sign designating a parking space for handicapped persons shall state the maximum penalty for parking in the space in violation of the law.

(d1) Repealed by Session Laws 1991, c. 530, s. 4.

(e) Enforcement of Handicapped Parking Privileges. — It shall be unlawful:

(1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons when the vehicle does not display the

distinguishing license plate, removable windshield placard, or temporary removable windshield placard as provided in this section, or a disabled veteran registration plate issued under G.S. 20-79.4;

(2) For any person not qualifying for the rights and privileges extended to handicapped persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate, removable windshield placard, or temporary removable windshield placard issued pursuant to the provisions of this section;

(3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;

(4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas.

(f) Penalties for Violation. —

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that a nonconforming sign is being used it shall be prima facie evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where the nonconforming sign is located is responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including a company police officer commissioned by the Attorney General under Chapter 74E, may cause a vehicle parked in violation of this section to be towed. The officer is a legal possessor as provided in G.S. 20-161(d)(2). The officer shall not be held to answer in any civil or criminal action to any owner, lienholder or other

person legally entitled to the possession of any motor vehicle removed from a space pursuant to this section, except where the motor vehicle is willfully, maliciously, or negligently damaged in the removal from the space to a place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies. (1971, c. 374, s. 1; 1973, cc. 126, 1384; 1977, c. 340, s. 2; 1979, c. 632; 1981, c. 682, s. 7; 1983, c. 326, ss. 1, 2; 1985, c. 249; c. 586; c. 764, s. 24; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 843; 1989, c. 760, s. 3; 1989 (Reg. Sess., 1990), c. 1052, ss. 1-3.1; 1991, c. 411, s. 2; c. 530, s. 4; c. 672, s. 5; c. 726, s. 23; c. 761, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 30; c. 1043, s. 4; 1993, c. 373, s. 1; 1994, Ex. Sess., c. 14, s. 31.)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, inserted "Class 2" in the second sentence of subsection (c3).

ARTICLE 2B.

Special Identification Cards for Nonoperators.

§ 20-37.7. Special identification card.

(a) Eligibility. — A person who is a resident of this State is eligible for a special identification card.

(b) Application. — To obtain a special identification card from the Division, a person must complete the application form used to obtain a drivers license.

(c) Format. — A special identification card shall be similar in size, shape, and design to a drivers license, but shall clearly state that it does not entitle the person to whom it is issued to operate a motor vehicle. A special identification card issued to an applicant must have the same background color that a drivers license issued to the applicant would have.

(d) Expiration and Fee. — A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who is legally blind, is at least 70 years old, or is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.

(e) Offense. — Any fraud or misrepresentation in the application for or use of a special identification card issued under this section is a Class 2 misdemeanor.

(f) Records. — The Division shall maintain a record of all recipients of a special identification card.

(g) No State Liability. — The fact of issuance of a special identification card pursuant to this section shall not place upon the State of North Carolina or any agency thereof any liability for the misuse thereof and the acceptance thereof as valid identification is a matter left entirely to the discretion of any person to whom such card is presented.

(h) Advertising. — The Division may utilize the various communications media throughout the State to inform North Carolina residents of the provisions of this section. (1973, c. 438, s. 1; 1975, c. 716, s. 5; 1979, c. 469, c. 667, s. 30; 1981, c. 673, ss. 1, 2; c. 690, s. 12; 1981 (Reg. Sess., 1982), c. 1257, s. 3; 1983, c. 443, s. 2; 1983 (Reg. Sess., 1984), c. 1062, s. 7; 1985, c. 141, s. 5; 1991, c. 689, s. 328; 1993, c. 368, s. 3; c. 490, ss. 1, 2; c. 539, s. 325; c. 553, s. 77; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 750, s. 2.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, added the subsection catchlines; in subsection (a) substituted the present language for "The Division of Motor Vehicles shall upon satisfactory proof of identification issue a special identification card to any person 11 years or older who is a resident of the State of North Carolina"; in subsection (b) substituted the present language for "Every application for a special identification card shall be made on the approved form furnished by the Division and shall be accompanied by a birth certificate and other proof of identification which shall be returned when the special identification card is issued"; in subsection (c), in the first sentence added "A" at the beginning, deleted "cards shall be issued with differing color photographic backgrounds according to the holder's age at time of issuance for the following age groups: (1) Persons who have not attained the age of 21 years. (2) Persons who have attained the age of 21 years" following "identification", deleted "The" preceding "card", substituted "drivers" for "driver's", and added the second sentence; and in subsection (f) deleted "of Motor Vehicles" following "Division", and deleted the former second sentence which read "The Division may promulgate any rules and regulations it deems necessary for the effective implementation of the provisions of this section."

§ 20-37.8. Fraudulent use prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Article 2C.

Commercial Driver License.

§ 20-37.15. Application for commercial drivers license.

(a) An application for a commercial drivers license must include the information required by G.S. 20-7 for a regular drivers license and a consent to release driving record information.

(a1) The application must be accompanied by a nonrefundable application fee of twenty dollars ($20.00). This fee does not apply in any of the following circumstances:

(1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.

(2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c).

(b) When the holder of a commercial drivers license changes his name or residence address, an application for a duplicate shall be made as provided in G.S. 20-7.1 and a fee paid as provided in G.S. 20-14. (1989, c. 771, s. 2; 1991, c. 726, s. 17; 1993 (Reg. Sess., 1994), c. 750, s. 3.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, rewrote subsection (a).

§ 20-37.16. Content of license; classifications and endorsements; fees.

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL — A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL — A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL — A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles carrying hazardous materials, other than tank vehicles
L	Double trailers that are longer combination vehicles
M	Motorcycles
N	Tank vehicles not carrying hazardous materials

Endorsement	Vehicles That Can Be Driven
P	Vehicles carrying passengers
T	Double trailers other than longer combination vehicles
X	Tank vehicles carrying hazardous materials.

To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to a person whose license is restricted to driving a school bus or school activity bus or to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes;

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions; and

(3) Farm vehicles that meet all of the following criteria:

a. Controlled and operated by the farmer or the farmer's employee and used exclusively for farm use;

b. Used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm;

c. Not used in the operations of a common or contract motor carrier; and

d. Used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation. (1989, c. 771, s. 2; 1991, c. 726, s. 18; 1993, c. 368, s. 4; 1993 (Reg. Sess., 1994), c. 750, ss. 4, 6.)

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 750, s. 4, effective January 1, 1995, rewrote subsection (a).

Session Laws 1993 (Reg. Sess., 1994), c. 750, s. 6, effective July 15, 1994, in subsection (c), in the second paragraph deleted "written" preceding "test" throughout the paragraph.

§ 20-37.21. Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 3.

Motor Vehicle Act of 1937.

Part 2. Authority and Duties of Commissioner and Division.

§ 20-39. Administering and enforcing laws; rules and regulations; agents, etc.; seal; fees; licenses and plates for undercover officers.

(a) The Commissioner is hereby vested with the power and is charged with the duty of administering and enforcing the provisions of this Article and of all laws regulating the operation of vehicles or the use of the highways, the enforcement or administration of which is now or hereafter vested in the Division.

(b) The Commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this Article and any other laws the enforcement and administration of which are vested in the Division.

(c) The Commissioner is authorized to designate and appoint such agents, field deputies, and clerks as may be necessary to carry out the provisions of this Article.

(d) The Commissioner shall adopt an official seal for the use of the Division.

(e) The Commissioner is authorized to cooperate with and provide assistance to the Environmental Management Commission, or appropriate local government officials, and to develop, adopt, and ensure enforcement of necessary rules and regulations, regarding programs of motor vehicle emissions inspection/maintenance required for areas in which ambient air pollutant concentrations exceed National Ambient Air Quality Standards.

(f) The Commissioner is authorized to charge and collect the following fees for the verification of equipment to be used on motor vehicles or to be sold in North Carolina, when that approval is required pursuant to this Chapter:

(1) When a federal standard has been established, the fee shall be equal to the cost of verifying compliance with the applicable federal standard; or

(2) When no federal standard has been established, the fee shall be equal to the cost of verifying compliance with the applicable State standard. Any motor vehicle manufacturer or distributor who is required to certify his products under the National Traffic and Motor Vehicle Safety Act of 1966,

as from time to time amended, may satisfy the provisions of this section by submitting an annual written certification to the Commissioner attesting to the compliance of his vehicles with applicable federal requirements. Failure to comply with the certification requirement or failure to meet the federal standards will subject the manufacturer or distributor to the fee requirements of this subsection.

(g) The Commissioner, notwithstanding any other provision of this Chapter, may lawfully to the extent necessary provide law-enforcement officers of the Division on special undercover assignments with motor vehicle operator's licenses and motor vehicle registration plates under assumed names using false or fictitious addresses. The Commissioner shall be responsible for the request for issuance and use thereof. The Commissioner may direct the immediate return of any operator's license or registration plate issued pursuant to this section.

(h) The Commissioner, notwithstanding any other provision of this Chapter, may lawfully and to the extent necessary, provide local, State or federal law-enforcement officers on special undercover assignments with motor vehicle drivers licenses and motor vehicle registration plates under assumed names using false or fictitious addresses. Such registration plates shall only be used on publicly owned or leased vehicles. Requests for these licenses and registration plates shall be made to the Commissioner by the head of the local, State or federal law-enforcement agency and be accompanied by approval in writing from the Director of the State Bureau of Investigation upon a specific finding by the Director that the request is justified and necessary. The Director shall keep a record of all such licenses, registration plates, assumed names, false or fictitious addresses, and law-enforcement officers using the licenses or registration plates, and shall request the immediate return of any license or registration plate that is no longer necessary. Licenses and registration plates provided under this subsection shall expire six months after initial issuance or subsequent validation after the request for extension has been approved in writing by the Director of the State Bureau of Investigation. The head of the local, State or federal law-enforcement agency shall be responsible for the use of the licenses and registration plates and shall return them immediately to the Commissioner for cancellation upon either (i) their expiration, (ii) request of the Director of the State Bureau of Investigation, or (iii) request of the Commissioner. Failure to return a license or registration plates issued pursuant to this subsection shall be punished as a Class 2 misdemeanor. At no time shall the number of valid licenses and registration plates issued under this act exceed fifty, and those issued shall be strictly monitored by the Director. All of the private registration plates issued to special agents of the State Bureau of Investigation under the Department of Justice and to alcohol law enforcement agents under the Department of Crime Control and Public Safety, pursuant to G.S. 14-250, may be fictitious plates and shall not be counted in the total number of fictitious plates authorized by this subsection.

(i) Notwithstanding the requirements of G.S. 20-7.1 and G.S. 20-67(a), the Commissioner may correct the address records of drivers license and registration plate holders as shown in the files of the Division to that shown on notices and renewal cards returned to the Division with new addresses provided by the United States

Postal Service. (1937, c. 407, s. 4; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 1; 1983, c. 223; c. 629, s. 2; c. 768, ss. 25.1, 25.2; 1985, c. 767, ss. 1, 2; 1987, c. 552; 1991, c. 53, s. 1; c. 654, s. 1; 1993, c. 539, s. 328; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 6.2(b).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 769, in s. 20 provides: "The Division of Motor Vehicles shall report quarterly, beginning in January 1995, to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division, on the Emission Inspection Program's compliance with regulations the Environmental Protection Agency adopted for the inspection and maintenance activities required in the Clean Air Amendments of 1990. The report shall include the receipts and expenditures from the Emissions Program Account."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

Effect of Amendments. —

The 1995 amendment, effective July 1, 1995, substituted "fifty" for "one hundred" in the next to last sentence of subsection (h).

§ 20-42. Authority to administer oaths and certify copies of records.

(a) Officers and employees of the Division designated by the Commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall charge for the acknowledgment of signatures a fee according to the following schedule:

(1) One signature	$2.00
(2) Two signatures	3.00
(3) Three or more signatures	4.00

Funds received under the provisions of this subsection shall be used to defray a part of the costs of distribution of license plates, registration certificates and certificates of title issued by the Division.

(b) The Commissioner and officers of the Division designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any document of the Division for a fee. The fee for a document, other than an accident report under G.S. 20-166.1, is five dollars ($5.00). The fee for an accident report is four dollars ($4.00). A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. The certification fee does not apply to a document furnished for official use to a judicial official or to an official of the federal government, a state government, or a local government. (1937, c. 407, s. 7; 1955, c. 480; 1961, c. 861, s. 1; 1967, c. 691, s. 41; c. 1172; 1971, c. 749; 1975, c. 716, s. 5; 1977, c. 785; 1979, c. 801, s. 7; 1981, c. 690, ss. 22, 23; 1991, c. 689, s. 331; 1995, c. 191, s. 8.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, in subsection (b) substituted "for a fee" for "charging a fee" at the end of the first sentence, rewrote the second sentence, added the third sentence, and in the last sentence deleted "to State officials or to county, municipal, or court officials of this State" following "furnished" and added the language beginning "to a judicial official" to the end of the sentence.

§ 20-43. Records of Division.

(a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours. A photographic image or signature recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be released except for law enforcement purposes.

(b) The Commissioner, upon receipt of notification from another state or foreign country that a certificate of title issued by the Division has been surrendered by the owner in conformity with the laws of such other state or foreign country, may cancel and destroy such record of certificate of title. (1937, c. 407, s. 8; 1947, c. 219, s. 1; 1971, c. 1070, s. 1; 1975, c. 716, s. 5; 1995, c. 195, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 7, 1995, added the second sentence in subsection (a).

§ 20-45. Seizure of documents and plates.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-47. Division may summon witnesses and take testimony.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 3. Registration and Certificates of Titles of Motor Vehicles.

§ 20-50. Owner to secure registration and certificate of title; temporary registration markers.

(a) Except as otherwise provided in this Article, every owner of a vehicle intended to be operated upon any highway of this State and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article: Provided that the Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. It is further provided that when the owner of a vehicle leases such vehicle to a carrier of passengers or property and it is actually used by such carrier in the operation of its business, the registration plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. Provided further that when the owner of a vehicle leases such vehicle to a farmer and it is actually used by such farmer in the operation of his farm, the registration plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require.

(b) The Division may issue a temporary license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is three dollars ($3.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

(1) It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.
(2) It expires on midnight of the day set for expiration.
(3) It may be used only on the vehicle for which issued and may not be transferred, loaned, or assigned to another.
(4) If it is lost or stolen, the person who applied for it must notify the Division.
(5) It may not be issued by a dealer.
(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 that apply to license plates apply to temporary license plates insofar as possible. (1937, c. 407, s. 15; 1943, c. 648; 1945, c. 956, s. 3; 1947, c. 219, s. 2; 1953, c. 831, s. 3; 1957, c. 246, s. 2; 1961, c. 360, s. 1; 1963, c. 552, s. 1; 1973, c. 919; 1975, c. 462; c. 716, s. 5; c. 767, s. 1; 1995, c. 394, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 10, 1995, rewrote subsection (b).

CASE NOTES

Registration and Certificate of Title Not Required. — Where purchaser of real property did not need to transport permanently attached mobile home along the highways and had no intention of doing so, purchaser was not required to register the mobile home nor to obtain a certificate of title; the mobile home was permanently affixed to the land when the property was deeded to the debtors and all parties intended the transaction to be one involving the sale of real property. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

§ 20-50.4. (Effective December 1, 1996) Division to refuse to register vehicles on which taxes are delinquent and when there is a failure to meet court-ordered child support obligations.

Upon receiving the list of motor vehicle owners and motor vehicles sent by county tax collectors pursuant to G.S. 105-330.7 or a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed, the Division shall refuse to register for the owner named in the list any vehicle identified in the list until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle for which registration was refused or, if the owner was on the report furnished by a child support enforcement agency, the Division shall refuse to register a vehicle for the owner until such time as the Division receives certification pursuant to G.S. 110-142.2.

The Division shall not refuse to register a vehicle for a person, not named in the list, to whom the vehicle has been transferred in good faith. Where a motor vehicle owner named in the list has transferred the registration plates from the motor vehicle identified in the list to another motor vehicle pursuant to G.S. 20-64 during the first vehicle's tax year, the Division shall refuse registration of the second vehicle until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle from which the plates were transferred. (1991, c. 624, s. 5; 1995, c. 538, s. 2(g).)

For this section as in effect until December 1, 1996, see the main volume.

Effect of Amendments. — The 1995 amendment, effective December 1, 1996, and applicable to child support owed on or after that date, added "and when there is a failure to meet court-ordered child support obligations" to the end of the catchline, and rewrote the first paragraph.

§ 20-51. Exempt from registration.

The following shall be exempt from the requirement of registration and certificate of title:

(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this Article relating to manufacturers, dealers, or nonresidents.

(2) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

(3) Any implement of husbandry, farm tractor, road construction or maintenance machinery or other vehicle which is not self-propelled that was designed for use in work off the highway and which is operated on the highway for the purpose of going to and from such nonhighway projects.

(4) Any vehicle owned and operated by the government of the United States.

(5) Farm tractors equipped with rubber tires and trailers or semitrailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor, implement of husbandry, and trailer or semitrailer while on any trip within a radius of 10 miles from the point of loading, provided that the vehicle does not exceed a speed of 35 miles per hour. This section shall not be construed as granting any exemption to farm tractors, implements of husbandry, and trailers or semitrailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors, implements of husbandry, and trailers or semitrailers.

(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, fertilizers or chemicals purchased or owned by such farmer or tenant for personal use in implementing husbandry or irrigation pipes and equipment owned by such farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term "transporting" as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith.

(7) Those small farm trailers known generally as tobacco-handling trailers, tobacco trucks or tobacco trailers when used by a farmer, his tenant, agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof.

(8) Any vehicle which is driven or moved upon a highway only for the purpose of crossing or traveling upon such highway from one side to the other provided the owner or lessee of the vehicle owns the fee or a leasehold in all the land along both sides of the highway at the place or crossing.

(9) Mopeds as defined in G.S. 20-4.01(27)d1.

(10) Devices which are designed for towing private passenger motor vehicles or vehicles not exceeding 5,000 pounds gross weight. These devices are known generally as "tow dollies." A tow dolly is a two-wheeled device without motive power designed for towing disabled motor vehicles and is drawn by a motor vehicle in the same manner as a trailer.

(11) Devices generally called converter gear or dollies consisting of a tongue attached to either a single or tandem axle upon which is mounted a fifth wheel and which is used to convert a semitrailer to a full trailer for the purpose of being drawn behind a truck tractor and semitrailer.

(12) Motorized wheelchairs or similar vehicles not exceeding 1,000 pounds gross weight when used for pedestrian purposes by a handicapped person with a mobility impairment as defined in G.S. 20-37.5.

(13) Any vehicle registered in another state and operated temporarily within this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage. (1937, c. 407, s. 16; 1943, c. 500; 1949, c. 429; 1951, c. 705, s. 2; 1953, c. 826, ss. 2, 3; c. 1316, s. 1; 1961, cc. 334, 817; 1963, c. 145; 1965, c. 1146; 1971, c. 107; 1973, cc. 478, 757, 964; 1979, c. 574, s. 6; 1981 (Reg. Sess., 1982), c. 1286; 1983, cc. 288, 732; 1987, c. 608; 1989, c. 157, s. 2; 1991, c. 411, s. 4; 1995, c. 50, s. 4.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, added subdivision (13).

§ 20-52. Application for registration and certificate of title.

(a) An owner of a vehicle subject to registration must apply to the Division for a certificate of title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application form provided by the Division. The application form must request all of the following information and may request other information the Division considers necessary:

(1) The owner's name.

(1a) If the owner is an individual, the following information:
  a. The owner's mailing address and residence address.
  b. The owner's social security number.

(1b) If the owner is a firm, a partnership, a corporation, or another entity, the address of the entity.

(2) A description of the vehicle, including the following:
  a. The make, model, type of body, and vehicle identification number of the vehicle.
  b. Whether the vehicle is new or used and, if a new vehicle, the date the manufacturer or dealer sold the vehicle to the owner and the date the manufacturer or dealer delivered the vehicle to the owner.

(3) A statement of the owner's title and of all liens upon the vehicle, including the names and addresses of all lienholders in the order of their priority, and the date and nature of each lien.

The application form must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the motor vehicle registration laws and may not disclose the social security number for any other purpose. The social security number of a person who applies to register a vehicle or of a person in whose name a vehicle is registered is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii).

(b) When such application refers to a new vehicle purchased from a manufacturer or dealer, such application shall be accompanied with a manufacturer's certificate of origin that is properly assigned to the applicant. If the new vehicle is acquired from a dealer or person located in another jurisdiction other than a manufacturer, the application shall be accompanied with such evidence of ownership as is required by the laws of that jurisdiction duly assigned by the disposer to the purchaser, or, if no such evidence of ownership be required by the laws of such other jurisdiction, a notarized bill of sale from the disposer. (1937, c. 407, s. 17; 1961, c. 835, ss. 2, 3; 1975, c. 716, s. 5; 1991, c. 183, s. 2; 1993 (Reg. Sess., 1994), c. 750, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, rewrote subsection (a).

§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-54. (Effective October 1, 1996) Authority for refusing registration or certificate of title.

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.

(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State.

(5) The required fee has not been paid.

§ 20-54 has a delayed effective date. See notes.

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(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid. (1937, c. 407, s. 19; 1975, c. 716, s. 5; 1993 (Reg. Sess., 1994), c. 754, s. 7.)

For this section as in effect until October 1, 1996, see the main volume.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1996, in subdivision (1) deleted "That" from the beginning, substituted "a false or fraudulent statement" for "any false or fraudulent statement that", substituted "Division, or" for "Division or that"; in subdivision (2) deleted "That" from the beginning; in subdivision (3) deleted "That" from the beginning, substituted "another person who has a valid lien against the vehicle" for "other person having valid lien upon such vehicle"; deleted "That" from the beginning of subdivisions (4) and (5); added subdivision (6), and made stylistic changes.

§ 20-58. Perfection by indication of security interest on certificate of title.

CASE NOTES

Recordation on Certificate of Title Required. — Security interests in vehicles requiring registration and certificates of title may be perfected only if recorded on the certificate of title. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

§ 20-59. Unlawful for lienor who holds certificate of title not to surrender same when lien satisfied.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-63. Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act,

and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-66. Renewal of vehicle registration.

(a) Annual Renewal. — The registration of a vehicle must be renewed annually. To renew the registration of a vehicle, the owner of the vehicle must file an application with the Division and pay the required registration fee. The Division may receive and grant an application for renewal of registration at any time before the registration expires.

(b) Method of Renewal. — When the Division renews the registration of a vehicle, it must issue a new registration card for the vehicle and either a new registration plate or a registration renewal sticker. The Division may renew a registration plate for any type of vehicle by means of a renewal sticker.

(b1) Repealed by Session Laws 1993, c. 467, s. 2.

(c) Renewal Stickers. — A registration renewal sticker issued by the Division must be displayed on the registration plate that it renews in the place prescribed by the Commissioner and must indicate the period for which it and the registration plate on which it is displayed are valid. Except where physical differences between a registration renewal sticker and a registration plate render a provision of this Chapter inapplicable, the provisions of this Chapter relating to registration plates apply to registration renewal stickers.

(d), (e) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, § 5, effective July 16, 1994.

(f) Repealed by Session Laws 1993, c. 467, s. 2.

(g) When Renewal Sticker Expires. — The registration of a vehicle that is renewed by means of a registration renewal sticker expires at midnight on the last day of the month designated on the sticker. It is lawful, however, to operate the vehicle on a highway until midnight on the fifteenth day of the month following the month in which the sticker expired if the vehicle is not registered under the International Registration Plan. If the vehicle is registered under the International Registration Plan, it is not lawful to operate the vehicle on a highway after the sticker expires.

The Division may vary the expiration dates of registration renewal stickers issued for a type of vehicle so that an approximately equal number expires at the end of each month, quarter, or other period consisting of one or more months. When the Division implements registration renewal for a type of vehicle by means of a renewal sticker, it may issue a registration renewal sticker that expires at the end of any monthly interval beginning at nine months and ending at eighteen months.

(h) When Calendar-Year Plate Expires. — The registration of a vehicle that is not renewed by means of a registration renewal sticker expires at midnight on December 31 of each year. It is lawful, however, to operate the vehicle on a highway until midnight on the following February 15.

(i) Property Tax Consolidation. — When the Division receives an application under subsection (a) for the renewal of registration before the current registration expires, the Division shall grant the application if it is made for the purpose of consolidating the property taxes payable by the applicant on classified motor vehicles, as defined in G.S. 105-330. The registration fee for a motor vehicle whose registration cycle is changed under this subsection shall be reduced by a prorated amount. The prorated amount is one-twelfth of the registration fee in effect when the motor vehicle's registration was last renewed multiplied by the number of full months remaining in the motor vehicle's current registration cycle, rounded to the nearest multiple of twenty-five cents (25¢). (1937, c. 407, s. 30; 1955, c. 554, s. 3; 1973, c. 1389, s. 1; 1975, c. 716, s. 5; 1977, c. 337; 1979, 2nd Sess., c. 1280, ss. 2, 3; 1981 (Reg. Sess., 1982), c. 1258, s. 1; 1985 (Reg. Sess., 1986), c. 982, s. 24; 1991, c. 624, ss. 6, 7; c. 672, s. 7; c. 726, s. 23; 1993, c. 467, s. 2; 1993 (Reg. Sess., 1994), c. 761, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, deleted "prorated fees" at the end of the section catchline; in subsection (b), deleted "not" following "Division may", substituted "any type of vehicle" for "a vehicle", deleted "unless the Division is authorized to use that method of renewal" at the end of the second sentence, and deleted the last sentence, which listed the types of vehicles for which renewal stickers were authorized; repealed subsections (d) and (e) regarding staggered expiration and prorated fee; and, in subsection (g), added "if the vehicle is not registered under the International Registration Plan" at the end of the first sentence of the first paragraph, added the second sentence of that paragraph, and added the second paragraph.

§ 20-71. Altering or forging certificate of title, registration card or application, a felony; reproducing or possessing blank certificate of title.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 3A. Salvage Titles.

§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 4. Transfer of Title or Interest.

§ 20-72. Transfer by owner.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Stated in Hughes v. Young, 115 N.C. App. 325, 444 S.E.2d 248 (1994).

§ 20-73. New owner must get new certificate of title.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-74. Penalty for making false statement about transfer of vehicle.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-75. When transferee is dealer or insurance company.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-77. Transfer by operation of law; sale under mechanic's or storage lien; unclaimed vehicles.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 5. Issuance of Special Plates.

§ 20-79. Dealer license plates.

(a) How to Get a Dealer Plate. — A dealer licensed under Article 12 of this Chapter may obtain a dealer license plate by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division. The required fee is the amount set by G.S. 20-87(7).

(b) Number of Plates. — A dealer who was licensed under Article 12 of this Chapter for the previous 12-month period ending April 30 may obtain the number of dealer license plates allowed by the following table; the number allowed is based on the number of motor vehicles the dealer sold during the relevant 12-month period and the average number of qualifying sales representatives the dealer employed during that same 12-month period:

Vehicles Sold In Relevant 12-Month Period	Maximum Number of Plates
Fewer than 12	1
At least 12 but less than 25	4
At least 25 but less than 37	5
At least 37 but less than 49	6
49 or more	At least 6, but no more than 4 times the average number of qualifying sales representatives employed by the dealer during the relevant 12-month period.

A dealer who was not licensed under Article 12 of this Chapter for part or all of the previous 12-month period ending April 30 may obtain the number of dealer license plates that equals four times the number of qualifying sales representatives employed by the dealer on the date the dealer files the application. A "qualifying sales representative" is a sales representative who works for the dealer at least 25 hours a week on a regular basis and is compensated by the dealer for this work.

A dealer who sold fewer than 49 motor vehicles the previous 12-month period ending April 30 but has sold at least that number since May 1 may apply for additional dealer license plates at any time. The maximum number of dealer license plates the dealer may obtain is the number the dealer could have obtained if the dealer had sold at least 49 motor vehicles in the previous 12-month period ending April 30.

A dealer who applies for a dealer license plate must certify to the Division the number of motor vehicles the dealer sold in the relevant period. Making a material misstatement in an application for a dealer license plate is grounds for the denial, suspension, or revocation of a dealer's license under G.S. 20-294.

(c) Form and Duration. — A dealer license plate is subject to G.S. 20-63, except for the requirement that the plate display the registration number of a motor vehicle and the requirement that the plate be a "First in Flight" plate. In addition, a dealer license plate must have a distinguishing symbol identifying the plate as a dealer license plate.

A dealer license plate is issued for a fiscal year beginning July 1 and ending June 30. During the fiscal year for which it is issued, a dealer may transfer a dealer license plate from one vehicle to another. When one of the following occurs, a dealer must surrender to the Division all dealer license plates issued to the dealer:

(1) The dealer surrenders the license issued to the dealer under Article 12 of this Chapter.
(2) The Division suspends or revokes the license issued to the dealer under Article 12 of this Chapter.
(3) The Division rescinds the dealer license plates because of a violation of the restrictions on the use of a dealer license plate.

To obtain a dealer license plate after it has been surrendered, the dealer must file a new application for a dealer license plate and pay the required fee for the plate.

(d) **(Effective until July 1, 1996)** Restrictions on Use. — A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

(1) Is part of the inventory of the dealer.
(2) Is not consigned to the dealer.
(3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.
(4) Is not used by the dealer in another business in which the dealer is engaged.
(5) Is driven on a highway by a person who meets the following requirements and who carries a copy of the registration card for the dealer plates issued to the dealer and any demonstration permit issued to that person while driving the motor vehicle:
    a. Is an officer of the dealer, an employee of the dealer, or a person to whom the dealer has issued a demonstration permit.
    b. Is at least 18 years old unless the person is test-driving the vehicle and has a demonstration permit or is an employee of the dealer and regularly works for the dealer at least 15 hours a week.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

A dealer who sells, trades, or services farm tractors may use a dealer license plate on a vehicle that is owned by the dealer and is used to haul farm tractors or any other farm-related equipment sold, traded, or serviced by the dealer.

(d) **(Effective July 1, 1996)** Restrictions on Use. — A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

(1) Is part of the inventory of the dealer.
(2) Is not consigned to the dealer.
(3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.
(4) Is not used by the dealer in another business in which the dealer is engaged.

§ 20-79(d) is set out twice. See notes.

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(5) Is driven on a highway by a person who meets the following requirements and who carries a copy of the registration card for the dealer plates issued to the dealer and any demonstration permit issued to that person while driving the motor vehicle:
   a. Is an officer of the dealer, an employee of the dealer, or a person to whom the dealer has issued a demonstration permit.
   b. Is at least 18 years old unless the person is test-driving the vehicle and has a demonstration permit or is an employee of the dealer and regularly works for the dealer at least 15 hours a week.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

(e) Sanctions. — The following sanctions apply when a motor vehicle displaying a dealer license plate is driven in violation of the restrictions on the use of the plate:

(1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of fifty dollars ($50.00).

(2) The dealer to whom the plate is issued is subject to a civil penalty imposed by the Division of two hundred dollars ($200.00).

(3) The Division may rescind all dealer license plates issued to the dealer whose plate was displayed on the motor vehicle.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue.

(f) Transfer of Dealer Registration. — No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used. (1937, c. 407, s. 43; 1947, c. 220, s. 2; 1949, c. 583, s. 3; 1951, c. 985, s. 2; 1959, c. 1264, s. 3.5; 1961, c. 360, s. 15; 1975, c. 716, s. 5; 1979, c. 239; c. 612, s. 1; 1985, c. 764, s. 21; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1989, c. 770, s. 74.1(a); 1993, c. 321, s. 169.4; c. 440, s. 2; c. 539, s. 343; 1993 (Reg. Sess., 1994), c. 697, ss. 1, 2; c. 761, s. 6.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 1996. The second version of subsection (d) set out above is effective July 1, 1996.

Editor's Note. — The note appearing in the 1993 replacement pamphlet for this Chapter which refers to Session Laws 1993, c. 310, belongs under § 20-97.

Session Laws 1993, c. 539, s. 343, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), effective October 1, 1994, and applicable to offenses occurring on or after that date, amended this section as it read prior to the amendment by Session Laws 1993, c. 440, s. 2, by substituting "Class 2 misdemeanor" for "misdemeanor and for each offense shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) and may be imprisoned for not more than 60 days, or both such fine and imprisonment" in the last paragraph of subsection (a). Because the language amended by c. 539, s. 343 has been deleted by the amendment by c. 440, s. 2, the amendment by c. 539, s. 343 was not given effect. Section 343 of Chapter 539 of the 1993 Session Laws was repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 6, effective July 16, 1994.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 697, s. 2, effective July 6, 1994, substituted "plates issued to the dealer" for "plate displayed on the motor vehicle" in subdivision (d)(5).

Session Laws 1993 (Reg. Sess., 1994), c. 697, s. 1, effective July 1, 1996, deleted the former last paragraph of subsection (d) of this section, which read "A dealer who sells, trades, or services farm tractors may use a dealer license plate on a vehicle that is owned by the dealer and is used to haul farm tractors or any other farm related equipment sold, traded, or serviced by the dealer."

CASE NOTES

Applied in In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

Cited in McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487, cert. denied, 337 N.C. 694, 448 S.E.2d 528 (1994).

§ 20-79.2. Transporter plates.

(a) Who Can Get a Plate. — A person engaged in a business requiring the limited operation of a motor vehicle for any of the following purposes may obtain a transporter plate authorizing the movement of the vehicle for the specific purpose:

(1) To facilitate the manufacture, construction, rebuilding, or delivery of new or used truck cabs or bodies between manufacturer, dealer, seller, or purchaser.

(2) To repossess a motor vehicle.

(3) To pick up a motor vehicle that is to be repaired or otherwise prepared for sale by a dealer, to road-test the vehicle, if it is repaired, within a 10-mile radius of the place where it is repaired, and to deliver the vehicle to the dealer.

(4) To move a motor vehicle that is owned by the business and is a replaced vehicle offered for sale.

(5) To take a motor vehicle either to or from a motor vehicle auction where the vehicle will be or was offered for sale.

(6) To road-test a repaired truck whose GVWR is at least 15,000 pounds when the test is performed within a 10-mile radius of the place where the truck was repaired and the truck is owned by a person who has a fleet of at least five trucks whose GVWRs are at least 15,000 pounds and who maintains the place where the truck was repaired.

(7) To move a mobile office, a mobile classroom, or a mobile or manufactured home.

(8) To drive a motor vehicle that is at least 25 years old to and from a parade or another public event and to drive the motor vehicle in that event. A person who owns a motor vehicle that is at least 25 years old is considered to be in the business of collecting those vehicles.

(9) To drive a motor vehicle that is part of the inventory of a dealer to and from a motor vehicle trade show or exhibition or to, during, and from a parade in which the motor vehicle is used.

(10) To drive special mobile equipment in any of the following circumstances:
  a. From the manufacturer of the equipment to a facility of a dealer.
  b. From one facility of a dealer to another facility of a dealer.
  c. From a dealer to the person who buys the equipment from the dealer.

(b) How to Get a Plate. — A person may obtain a transporter plate by filing an application with the Division and paying the required fee. An application must be on a form provided by the Division and contain the information required by the Division. The fee for a transporter plate is one-half the fee set in G.S. 20-87(5) for a passenger motor vehicle of not more than 15 passengers.

(c) Form, Duration, and Transfer. — A transporter plate is a type of commercial license plate. A transporter plate is issued on a calendar-year basis. During the calendar year for which it is issued, a person may transfer a transporter plate from one vehicle to another as long as the vehicle is driven only for a purpose authorized by subsection (a) of this section. The Division may rescind a transporter plate that is displayed on a motor vehicle driven for a purpose that is not authorized by subsection (a) of this section. (1961, c. 360, s. 21; 1969, c. 600, s. 1; 1975, c. 222; 1979, c. 473, ss. 1, 2; c. 627, ss. 1-3; 1981, c. 727, ss. 1, 2; 1983, c. 426; 1987, c. 520; 1993, c. 440, s. 4; 1995, c. 50, s. 1.)

Effect of Amendments. — The 1995 amendment, effective April 26, 1995, in subdivision (a)(4) substituted "the business" for "a public utility, as defined in G.S. 62-3(23)a"; and added subdivision (a)(10).

§ 20-79.4. Special registration plates.

(a) General. — Upon application and payment of the required registration fees, a person may obtain from the Division a special registration plate for a motor vehicle registered in that person's name if the person qualifies for the registration plate. A special registration plate, with the exception of a personalized registration plate, may not be issued for a vehicle registered under the International Registration Plan or for a commercial truck. A holder of a special registration plate who becomes ineligible for the plate, for whatever reason, must return the special plate within 30 days.

(b) Types. — The Division shall issue the following types of special registration plates:

(1) Administrative Officer of the Courts. — Issuable to the Director of the Administrative Office of the Courts. The plate shall bear the phrase "J-20".

(2) Amateur Radio Operator. — Issuable to an amateur radio operator who holds an unexpired and unrevoked amateur radio license issued by the Federal Communications Commission and who asserts to the Division that a portable transceiver is carried in the vehicle. The plate shall bear the phrase "Amateur Radio". The plate shall bear the operator's official amateur radio call letters, or call letters

with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each.

(2a) American Legion. — Issuable to a member of the American Legion. The plate shall bear the words "American Legion" and the emblem of the American Legion. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(3) Civil Air Patrol Member. — Issuable to an active member of the North Carolina Wing of the Civil Air Patrol. The plate shall bear the phrase "Civil Air Patrol". A plate issued to an officer member shall begin with the number "201" and the number shall reflect the seniority of the member; a plate issued to an enlisted member, a senior member, or a cadet member shall begin with the number "501".

(3a) Civic Club. — Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

(4) Class D Citizen's Radio Station Operator. — Issuable to a Class D citizen's radio station operator. For an operator who has been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the operator's official Class D citizen's radio station call letters. For an operator who has not been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the phrase "Citizen's Band Radio".

(5) Clerk of Superior Court. — Issuable to a current or retired clerk of superior court. A plate issued to a current clerk shall bear the phrase "Clerk Superior Court" and the letter "C" followed by a number that indicates the county the clerk serves. A plate issued to a retired clerk shall bear the phrase "Clerk Superior Court, Retired", the letter "C" followed by a number that indicates the county the clerk served, and the letter "X" indicating the clerk's retired status.

(6) Coast Guard Auxiliary Member. — Issuable to an active member of the United States Coast Guard Auxiliary. The plate shall bear the phrase "Coast Guard Auxiliary".

(6a) Collegiate Insignia Plate. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a public or private college or university.

(7) County Commissioner. — Issuable to a county commissioner of a county in this State. The plate shall bear the words "County Commissioner" followed first by a number representing the commissioner's county and then by a letter or number that distinguishes plates issued to county commissioners of the same county. The number of a county shall be the order of the county in an alphabetical list of

counties that assigns number one to the first county in the list and a letter or number to distinguish different cars owned by the county commissioners in that county. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(8) Disabled Veteran. — Issuable to a veteran of the armed forces of the United States who suffered a 100% service-connected disability.

(9) District Attorney. — Issuable to a North Carolina or United States District Attorney. The plate issuable to a North Carolina district attorney shall bear the letters "DA" followed by a number that represents the prosecutorial district the district attorney serves. The plate for a United States attorney shall bear the phrase "U.S. Attorney" followed by a number that represents the district the attorney serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(10) Fire Department or Rescue Squad Member. — Issuable to an active regular member or volunteer member of a fire department, rescue squad, or both a fire department and rescue squad. The plate shall bear the words "Firefighter", "Rescue Squad", or "Firefighter-Rescue Squad".

(10a) Future Farmers of America. — Issuable to a member or a supporter of the National Future Farmers of America Organization. The plate shall bear the emblem of the organization and the letters "FFA". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(11) Historic Vehicle Owner. — Issuable for a motor vehicle that is at least 35 years old measured from the date of manufacture. The plate for an historic vehicle shall bear the word "Antique" unless the vehicle is a model year 1943 or older. The plate for a vehicle that is a model year 1943 or older shall bear the word "Antique" or the words "Horseless Carriage", at the option of the vehicle owner.

(11a) Historical Attraction Plate. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit historical attraction located in North Carolina.

(12) Honorary Plate. — Issuable to a member of the Honorary Consular Corps, who has been certified by the U. S. State Department, the plate shall bear the words "Honorary Consular Corps" and a distinguishing number based on the order of issuance.

(13) Judge or Justice. — Issuable to a sitting or retired judge or justice in accordance with G.S. 20-79.6.

(13a) Legion of Valor. — Issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The plate shall bear the emblem and name of the recipient's decoration.

(14) Legislator. — Issuable to a member of the North Carolina General Assembly. The plate shall bear "The Great Seal of the State of North Carolina" and, as appropriate, the word

"Senate" or "House" followed by the Senator's or Representative's assigned seat number.

(15) Marshal. — Issuable to a United States Marshal. The plate shall bear the phrase "U.S. Marshal" followed by a number that represents the district the Marshal serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(16) Military Reservist. — Issuable to a member of a reserve component of the armed forces of the United States. The plate shall bear the name and insignia of the appropriate reserve component. Plates shall be numbered sequentially for members of a component with the numbers 1 through 5000 reserved for officers, without regard to rank.

(16a) Military Retiree. — Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(17) National Guard Member. — Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase "National Guard". A plate issued to an active member shall bear a number that reflects the seniority of the member; a plate issued to a commissioned officer shall begin with the number "1"; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number "1601"; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number "3001". The plate issued to a retired or separated member shall indicate the member's retired status.

(17a) Olympic Games. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the Olympic Games.

(18) Partially Disabled Veteran. — Issuable to a veteran of the armed forces of the United States who suffered a service connected disability of less than 100%.

(19) Pearl Harbor Survivor. — Issuable to a veteran of the armed forces of the United States who was present at and survived the attack on Pearl Harbor on December 7, 1941. The plate will bear the phrase "Pearl Harbor Survivor" and the insignia of the Pearl Harbor Survivors' Association.

(20) Personalized. — Issuable to the registered owner of a motor vehicle. The plate will bear the letters or letters and numbers requested by the owner. The Division may refuse to issue a plate with a letter combination that is offensive to good taste and decency. The Division may not issue a plate that duplicates another plate.

(21) Prisoner of War. — Issuable to the following:
  a. A member or veteran member of the armed forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the armed forces.
  b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving

spouse continues to renew the plate and does not remarry.

(21a) Professional Sports Fan. — Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. The Division shall not develop a professional sports fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate.

(22) Purple Heart Recipient. — Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded" and the letters "PH".

(22a) Register of Deeds. — Issuable to a register of deeds. The plate shall bear the words "Register of Deeds" and the letter "R" followed by a number representing the county of the register of deeds. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list.

(22b) Special Olympics. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the North Carolina Special Olympics.

(22c) Square Dance Clubs. — Issuable to a member of a recognized square dance organization exempt from corporate income tax under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase identifying the club and the emblem of the club. The Division shall not issue a dance club plate authorized by this subdivision unless it receives at least 300 applications for that dance club plate.

(23) State Government Official. — Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.

(23a) State Attraction. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit State attraction located in North Carolina.

(24) Street Rod Owner. — Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase "Street Rod". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(25) Transportation Personnel. — Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters "DOT" followed by a number from 1 to 85, as designated by the Governor.

(26) U.S. Representative. — Issuable to a United States Representative for North Carolina. The plate shall bear the phrase "U.S. House" and shall be issued on the basis of Congressional district numbers.

(27) U.S. Senator. — Issuable to a United States Senator for North Carolina. The plates shall bear the phrase "U.S.

Senate" and shall be issued on the basis of seniority represented by the numbers 1 and 2.

(28) Veterans of Foreign Wars. — Issuable to a member or a supporter of the Veterans of Foreign Wars. The plate shall bear the words "Veterans of Foreign Wars" or "VFW" and the emblem of the VFW. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(29) Wildlife Resources. — Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing a native wildlife species occurring in North Carolina.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1042, s. 1, effective January 1, 1993. (1991, c. 672, s. 2; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 1042, s. 1; 1993, c. 543, s. 2; 1995, c. 326, ss. 1-3; c. 433, ss. 1, 4.1.)

Effect of Amendments. — Session Laws 1995, c. 326, ss. 1-3, effective June 26, 1995, in subsection (b) deleted "or a supporter" following "member" in the first sentence of subdivision (b)(2a); in subdivision (b)(5) added "current or retired" in the first sentence, substituted "A plate issued to a current clerk" for "The plate" in the second sentence, and added the last sentence; and added subdivision (b)(21a).

Session Laws 1995, c. 433, ss. 1 and 4.1, effective July 13, 1995, added subdivisions (b)(17a) and (b)(22c).

§ 20-79.7. Fees for special registration plates and distribution of the fees.

(a) Fees. — Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00.

(b) Distribution of Fees. — The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0

Special Plate	SRPA	CCAPA	NHTF
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0.

(c) Use of Funds in Special Registration Plate Account. —

(1) The Division shall deduct the costs of special registration plates, including the costs of issuing, handling, and advertising the availability of the special plates, from the Special Registration Plate Account.

(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this subsection, there is appropriated from the Special Registration Plate Account the sum of five hundred twenty-five thousand dollars ($525,000) for the 1995-96 fiscal year to provide operating assistance for the Visitor and Welcome Centers:

a. on U.S. Highway 17 in Camden County, ($75,000);
b. on U.S. Highway 17 in Brunswick County, ($75,000);
c. on U.S. Highway 441 in Macon County, ($75,000);
d. in the Town of Boone, Watauga County, ($75,000);
e. on U.S. Highway 29 in Caswell County, ($75,000);
f. on U.S. Highway 70 in Carteret County, ($75,000); and
g. on U.S. Highway 64 in Tyrrell County, ($75,000).

(3) The Division shall transfer the remaining revenue in the Account quarterly as follows:

a. Thirty-three percent (33%) to the account of the Department of Commerce to aid in financing out-of-state print and other media advertising under the program for the promotion of travel and industrial development in this State.

b. Fifty percent (50%) to the Department of Transportation to be used solely for the purpose of beautification of highways other than those designated as interstate. These funds shall be administered by the Department of Transportation for beautification purposes not inconsistent with good landscaping and engineering principles.

c. Seventeen percent (17%) to the account of the Department of Human Resources to promote travel accessibility for disabled persons in this State. These funds shall be used to collect and update site information on travel attractions designated by the Department of Commerce in its publications, to provide technical assistance to travel attractions concerning accommodation of disabled tourists, and to develop, print, and promote the publication ACCESS NORTH CAROLINA as provided in G.S. 168-2. Any funds allocated for these purposes that are neither spent nor obligated at the end of the fiscal year shall be transferred to the Department of Administration for removal of man-made barriers to disabled travelers at State-funded travel attractions. Guidelines for the removal of man-made barriers shall be developed in consultation with the Department of Human Resources. (1967, c. 413; 1971, c. 42; 1973, c. 507, s. 5; c. 1262, s. 86; 1975, c. 716, s. 5; 1977, c. 464, s. 3; c. 771, s. 4; 1979, c. 126, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1258, s. 6; 1983, c. 848; 1985, c. 766; 1987, c. 252; c. 738, s. 140; c. 830, ss. 113(a), 116(a)-(c); 1989, c. 751, s. 7(1); c. 774, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 31; 1991, c. 672, s. 3; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 959, s. 2; c. 1042, s. 2; c. 1044, ss. 33, 34; 1993, c. 321, s. 169.3(a); c. 543, s. 3; 1995, c. 163, s. 2; c. 324, s. 18.7(a); c. 433, ss. 2, 3; c. 507, s. 18.17(a).)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.7(b), provides: "The Joint Legislative Transportation Oversight Committee shall investigate the continued use of the Special Registration Plate Fund as a source of operational funds for visitors centers and shall report the results of that investigation to the 1996 Session of the General Assembly."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that c. 507 shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 18.17(b), provides that the funds appropriated in subdivision (c)(2)g., as added by s. 18.17(a) of that act, should be paid to Partnership for the Sounds, Inc., by the Department of Transportation.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 163, s. 2, effective June 5, 1995, in subsection (b), substituted "Natural Heritage Trust Fund (NHTF)" for "Recreation and Natural Heritage Trust Fund (RNHTF)", and substituted "NHTF" for "RNHTF" in the special plate column heading.

Session Laws 1995, c. 324, s. 18.7(a), effective July 1, 1995, in subdivision (c)(2) substituted "four hundred fifty thousand dollars ($450,000) for the 1995-96 fiscal year" for "three hundred twenty-five thousand dollars ($325,000) for the 1993-94 fiscal year and the sum of three hundred seventy-five thousand dollars ($375,000) for the 1994-95 fiscal year" in the introductory language, deleted "and" from the end of subdivision (2)d., substituted "($75,000); and" for "($25,000) for the 1993-94 fiscal year and ($75,000) for the 1994-95 fiscal year" in subdivision (2)e., and added subdivision (2)f.

Session Laws 1995, c. 433, ss. 2 and 3, effective July 13, 1995, in subsection (a) added "Olympic Games" under the column designated "Special Plate", and opposite "Olympic Games" added "$25.00" under the column designated "Additional Fee Amount"; in subsection (b) added "Olympic Games" under the column designated "Special Plate", and opposite "Olympic Games" added "$10.00", "$15.00" and "0" under the columns designated "SRPA", "CCAPA" and "RNHTF", respectively.

Session Laws 1995, c. 507, s. 18.17(a), effective July 1, 1995, in subdivision (c)(2) substituted "five hundred twenty-five thousand dollars ($525,000)" for "four hundred fifty thousand dollars ($450,000)" in the introductory language, deleted "and" at the end of subdivision (2)e., added "and" at the end of subdivision (2)f., and added subdivision (2)g.

§ 20-81.12. Collegiate insignia plates and certain other special plates.

(a) Collegiate Insignia Plates. — The Division must receive 300 or more applications for a collegiate insignia license plate for a college or university before a collegiate license plate may be developed. The color, design, and material for the plate must be approved by both the Division and the alumni or alumnae association of the appropriate college or university. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of in-State collegiate insignia plates to the Board of Governors of The University of North Carolina for in-State, public colleges and universities and to the respective board of trustees for in-State, private colleges and universities in proportion to the number of collegiate plates sold representing that institution for use for academic enhancement.

(b) Historical Attraction Plates. — The Division must receive 300 or more applications for an historical attraction plate representing a publicly owned or nonprofit historical attraction located in North Carolina and listed below before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of historical attraction plates to the organizations named below in proportion to the number of historical attraction plates sold representing that organization:

(1) Historical Attraction Within Historic District. — The revenue derived from the special plate shall be transferred quarterly to the appropriate Historic Preservation Commission, or entity designated as the Historic Preservation Commission, and used to maintain property in the historic district in which the attraction is located. As used in this subdivision, the term "historic district" means a district created under G.S. 160A-400.4.

(2) Nonprofit Historical Attraction. — The revenue derived from the special plate shall be transferred quarterly to the nonprofit corporation that is responsible for maintaining the attraction for which the plate is issued and used to develop and operate the attraction.

(3) State Historic Site. — The revenue derived from the special plate shall be transferred quarterly to the Department of Cultural Resources and used to develop and operate the site for which the plate is issued. As used in this subdivision, the term "State historic site" has the same meaning as in G.S. 121-2(11).

(b1) Special Olympics Plates. — The Division must receive 300 or more applications for a special olympics plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of special olympics plates to the North Carolina Special Olympics, Inc., to be used to train volunteers to assist in the statewide games and to help pay the costs of the statewide games.

(b2) State Attraction Plates. — The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

(1) The North Carolina Arboretum. — The revenue derived from the special plate shall be transferred quarterly to The North Carolina Arboretum Society and used to help the Society obtain grants for the North Carolina Arboretum and for capital improvements to the North Carolina Arboretum.

(2) The North Carolina Zoological Society. — The revenue derived from the special plate shall be transferred quarterly to The North Carolina Zoological Society, Incorporated, to be used for educational programs and conservation programs at the North Carolina Zoo at Asheboro and for operating expenses of the North Carolina Zoo at Asheboro.

(b3) Wildlife Resources Plates. — The Division must receive 300 or more applications for a wildlife resources plate with a picture representing a particular native wildlife species occurring in North Carolina before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of wildlife resources plates to the Wildlife Conservation Account established by G.S. 143-247.2.

(b4) Olympic Games. — The Division may not issue an Olympic Games special plate unless it receives 300 or more applications for the plate and the U.S. Olympic Committee licenses, without charge, the State to develop a plate bearing the Olympic Games symbol and name. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Olympic Games plates to the N.C. Health and Fitness Foundation, Inc., which will allocate the funds as follows:

(1) Fifty percent (50%) to the U.S. Olympic Committee to assist in training olympic athletes.

(2) Twenty-five percent (25%) to North Carolina Amateur Sports to assist with administration of the State Games of North Carolina.

(3) Twenty-five percent (25%) to the Governor's Council on Physical Fitness and Health to support local fitness council development throughout North Carolina.

(c) General. — An application for a special license plate named in this section may be made at any time during the year. If the application is made to replace an existing current valid plate, the special plate must be issued with the appropriate decals attached. No refund shall be made to the applicant for any unused portion remaining on the original plate. The request for a special license plate named in this section may be combined with a request that the plate be a personalized license plate.

(d) through (g) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1042, s. 3, effective January 1, 1993. (1991, c. 758, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 33; c. 1042, s. 3; 1993, c. 543, s. 5; 1995, c. 433, s. 4.)

Effect of Amendments. — The 1995 amendment, effective July 13, 1995, added subsection (b4).

§ 20-82: Repealed by Session Laws 1995, c. 163, s. 3, effective June 5, 1995.

Part 7. Title and Registration Fees.

§ 20-85. Schedule of fees.

(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title	$35.00
(2) Each application for duplicate or corrected certificate of title	10.00
(3) Each application of repossessor for certificate of title	10.00
(4) Each transfer of registration	10.00
(5) Each set of replacement registration plates	10.00
(6) Each application for duplicate registration card	10.00
(7) Each application for recording supplementary lien	10.00
(8) Each application for removing a lien from a certificate of title	10.00
(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale	10.00
(10) Each application for a salvage certificate of title made by an insurer	10.00.

(b) **(Effective until July 1, 1996)** Thirty-one dollars and fifty cents ($31.50) of each title fee collected under subdivision (a)(1) of this section and all of the fees collected under subdivisions (a)(2) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. The remaining three dollars and fifty cents ($3.50) of the title fee collected under subdivision (a)(1) of this section and the fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars ($15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5.

(b) **(Effective July 1, 1996)** The fees collected under subdivisions (a)(1) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. The fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars ($15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5. (1937, c. 407, s. 49; 1943, c. 648; 1947, c. 219, s. 9; 1955, c. 554, s. 4; 1961, c. 360, s. 19; c. 835, s. 11; 1975, c. 430; c. 716, s. 5; c. 727; c. 875, s. 4; c. 879, s. 46; 1979, c. 801, s. 11; 1981, c. 690, s. 19; 1989, c. 692, s. 2.1; c. 700, s. 1; c. 770, s. 74.11;

§ 20-85(b) is set out twice. See notes.

1991, c. 193, s. 8; 1993, c. 467, s. 5; 1995, c. 50, s. 2; c. 390, s. 34; c. 509, s. 135.2(i).)

Subsection (b) set out twice. — The first version of subsection (b) set out above is effective until July 1, 1996. The second version of subsection (b) set out above is effective July 1, 1996.

Editor's Note. —

Session Laws 1995, c. 509, s. 135.2(j), effective July 29, 1995, repealed the amendment to this section by Session Laws 1995, c. 390, s. 34, effective July 1, 1996, which would have rewritten the first sentence of subsection (b).

Effect of Amendments. — Session Laws 1995, c. 50, s. 2, effective July 1, 1995, added subdivision (a)(10); and in subsection (b), in the first sentence substituted "subdivisions (a)(2) through (a)(9)" for "the other subdivisions in subsection (a)", substituted a period for a semicolon between "Fund" and "The", thereby creating the present second sentence, and in the present second sentence inserted "of this section and the fees collected under subdivision (a)(10) of this section".

Session Laws 1995, c. 509, s. 135.2(i), effective July 1, 1996, in subsection (b), deleted "Thirty-one dollars and fifty cents ($31.50) of each title fee collected under subdivision (a)(1) of this section and all of" from the beginning, substituted "subdivisions (a)(1) through (a)(9)" for "subdivisions (a)(2) through (a)(9)", and deleted "remaining three dollars and fifty cents ($3.50) of the title fee collected under subdivision (a)(1) of this section and the" preceding "fees" in the second sentence.

§ 20-88. Property-hauling vehicles.

(a) Determination of Weight. — For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of 1,000 pounds or major fraction thereof, weights of over 500 pounds counted as 1,000 and weights of 500 pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for 6,000 pounds or less gross weight and the gross weight of such combination does not exceed 9,000 pounds, except wreckers as defined under G.S. 20-4.01(50). Those property-hauling vehicles registered for 4,000 pounds shall be permitted a tolerance of 500 pounds above the weight permitted under the table of weights and rates appearing in subsection (b) of this section.

(b) The following fees are imposed on the annual registration of self-propelled property-hauling vehicles; the fees are based on the type of vehicle and its weight:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	*Farmer*
Not over 4,000 pounds	$0.23
4,001 to 9,000 pounds inclusive	.29
9,001 to 13,000 pounds inclusive	.37
13,001 to 17,000 pounds inclusive	.51
Over 17,000 pounds	.58

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	*Private Hauler, Contract Carriers, Flat Rate Common Carriers and Exempt for-Hire Carriers*
Not over 4,000 pounds	$0.46
4,001 to 9,000 pounds inclusive	.63
9,001 to 13,000 pounds inclusive	.78
13,001 to 17,000 pounds inclusive	1.06
Over 17,000 pounds	1.20

(1) The minimum fee for a vehicle licensed under this subsection is seventeen dollars and fifty cents ($17.50) at the farmer rate and twenty-one dollars and fifty cents ($21.50) at the private hauler, contract carrier, and common carrier rates.

(2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.

(3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.

(4) "Farm products" means any food crop, livestock, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term "farm products" also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.

(5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.

(5a) Notwithstanding any other provision of this Chapter, license plates issued pursuant to this subsection at the farmer rate may be purchased for any three-month period at one fourth of the annual fee.

(6) There shall be paid to the Division annually as of the first of January, the following fees for "wreckers" as defined under G.S. 20-4.01(50): a wrecker fully equipped weighing 7,000 pounds or less, seventy-five dollars ($75.00); wreckers weighing in excess of 7,000 pounds shall pay one hundred forty-eight dollars ($148.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) The fee for a semitrailer or trailer is ten dollars ($10.00) for each year or part of a year. The fee is payable on or before January 1 of each year. Upon the application of the owner of a semitrailer or trailer, the Division may issue a multiyear plate and registration card for the semitrailer or trailer for a fee of seventy-five dollars ($75.00). A multiyear plate and registration card for a semitrailer or trailer are valid until the owner transfers the semitrailer or trailer to another person or surrenders the plate and registration card to the Division. A multiyear plate may not be transferred to another vehicle.

The Division shall issue a multiyear semitrailer or trailer plate in a different color than an annual semitrailer or trailer plate and shall include the word "multiyear" on the plate. The Division may not issue a multiyear plate for a house trailer.

(d) Rates on trucks, trailers and semitrailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Repealed by Session Laws 1981, c. 976, s. 6, effective January 1, 1982.

(f) Repealed by Session Laws 1995, c. 163, s. 6, effective June 5, 1995.

(g) Repealed by Session Laws 1969, c. 600, s. 17.

(h) Repealed by Session Laws 1979, c. 419.

(i) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(j) No heavy vehicle subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954 (26 U.S.C. 4481) may be registered or licensed pursuant to G.S. 20-88 without proof of payment of the use tax imposed by that law. The proof of payment shall be on a form prescribed by the United States Secretary of Treasury pursuant to the provisions of 23 U.S.C. 141(d).

(k) A person may not drive a vehicle on a highway if the vehicle's gross weight exceeds its declared gross weight. A vehicle driven in violation of this subsection is subject to the axle-group weight penalties set in G.S. 20-118(e). The penalties apply to the amount by which the vehicle's gross weight exceeds its declared weight. (1937, c. 407, s. 52; 1939, c. 275; 1941, cc. 36, 227; 1943, c. 648; 1945, c. 569, s. 1; c. 575, s. 1; c. 576, s. 3; c. 956, ss. 1, 2; 1949, cc. 355, 361; 1951, c. 583; c. 819, ss. 1, 2; 1953, c. 568; c. 694, s. 1; c. 1122; 1955, c. 554, s. 8; 1957, c. 681, s. 2; c. 1215; 1959, c. 571; 1961, c. 685; 1963, c. 501; c. 702, ss. 2, 3; 1967, c. 1095, ss. 1, 2; 1969, c. 600, ss. 12-17; c. 1056, s. 1; 1973, c. 154, ss. 1, 2; c. 291; 1975, c. 716, s. 5; 1977, c. 638; 1979, c. 419; c. 631; 1981, c. 67; c. 690, ss. 29, 30; c. 976, s. 6; 1983, c. 43;

c. 190, s. 1; c. 761, s. 144; c. 768, s. 4; 1991 (Reg. Sess., 1992), c. 947, s. 1; 1993, c. 467, s. 4; c. 543, s. 1; 1995, c. 109, s. 1; c. 163, s. 6.)

Effect of Amendments. — Session Laws 1995, c. 109, s. 1, effective October 1, 1995, added subsection (k).

Session Laws 1995, c. 163, s. 6, effective June 5, 1995, repealed subsection (f) regarding nonresident motor vehicle carriers which do not operate in intrastate commerce in North Carolina.

§ 20-88.01. Revocation of registration for failure to register for or comply with road tax or pay civil penalty for buying or selling non-tax-paid fuel.

(a) Road Tax. — The Secretary of Revenue may notify the Commissioner of those motor vehicles that are registered or are required to be registered under Article 36B of Chapter 105 and whose owners or lessees, as appropriate, are not in compliance with Article 36B, 36C, or 36D of Chapter 105. When notified, the Commissioner shall withhold or revoke the registration plate for the vehicle.

(b) Non-tax-paid Fuel. — The Secretary of Revenue may notify the Commissioner of those motor vehicles for which a civil penalty imposed under G.S. 105-449.118 has not been paid. When notified, the Commissioner shall withhold or revoke the registration plate of the vehicle. (1983, c. 713, s. 54; 1989, c. 692, s. 6.1; c. 770, s. 74.5; 1991, c. 613, s. 4; 1995, c. 390, s. 11.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "36B, 36C, or 36D" for "36A or 36B" in subsection (a); and substituted "G.S. 105-449.118" for "G.S. 105-441.1 or G.S. 105-449.24" in subsection (b).

§ 20-88.1. Driver education.

(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose. The driver education program established pursuant to this section shall include instructions on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of this Chapter. In addition, this program shall include at least six hours of instruction on the offense of driving while impaired and related subjects.

(b) The State Board of Education shall adopt a salary range for driver education instructors who are public school employees and who do not hold teacher certificates.

Driver education instructors who are public school employees and who hold teacher certificates shall be paid on the teacher salary schedule. A day of employment for driver education instructors who hold teacher certificates shall be the same number of hours required of all regular classroom teachers as established by the local board of education.

(b1) The State Board of Education shall adopt rules to permit local boards of education to enter contracts with public or private entities to provide a program of driver education at public high schools. All driver education instructors shall meet the requirements established by the State Board of Education; provided, however, driver education instructors shall not be required to hold teacher certificates.

(c) All expenses incurred by the State in carrying out the provisions of this section shall be paid out of the Highway Fund.

(d) The Division shall prepare a driver license handbook that explains the traffic laws of the State and shall periodically revise the handbook to reflect changes in these laws. At the request of the Department of Education, the Division shall provide free copies of the handbook to that Department for use in the program of driver education offered at public high schools. (1957, c. 682, s. 1; 1965, c. 410, s. 1; 1975, c. 431; c. 716, s. 5; 1977, c. 340, s. 4; c. 1002; 1983, c. 761, s. 141; 1985 (Reg. Sess., 1986), c. 982, s. 25; 1991, c. 689, s. 32(a); 1993 (Reg. Sess., 1994), c. 761, s. 7.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, added subsection (d).

§ 20-94. Partial payments.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-95. Prorated fee for license plate issued for other than a year.

(a) Calendar-Year Plate. — The fee for a calendar-year license plate issued on or after April 1 of a year is a percentage of the annual fee determined in accordance with the following table:

Date Plate Issued	Percentage of Annual Fee
April 1 through June 30	75%
July 1 through September 30	50
October 1 through December 31	25

(a1) Plate With Renewal Sticker. — The fee for a license plate whose registration is renewed by means of a registration renewal sticker for a period of other than 12 months is a prorated amount of the annual fee. The prorated amount is one-twelfth of the annual fee multiplied by the number of full months in the period beginning the date the renewal sticker becomes effective until the date the renewal sticker expires, rounded to the nearest dollar.

(b) Scope. — This section does not apply to license plates issued pursuant to G.S. 20-79.1, 20-79.2, 20-84, 20-84.1, 20-87(9) or (10), and 20-88(c). (1937, c. 407, s. 59; 1947, c. 914, s. 3; 1979, c. 476; 1991, c. 672, s. 6; c. 726, s. 23; 1993, c. 440, s. 6; 1993 (Reg. Sess., 1994), c. 761, s. 8.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, substituted "Prorated fee for license plate issued for other" for "Licenses for less" in the section catchline, and rewrote the section, in part by adding subsection (a1).

§ 20-96. Collection of delinquent penalties and taxes.

A law enforcement officer who discovers that a vehicle used for the transportation of property is being operated on the highways and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:

(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.

(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid. When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State is not liable for damage to or loss of the property being hauled. (1937, c. 407, s. 60; 1943, c. 726; 1949, c. 583, s. 8; c. 1207, s. 4½; c. 1253; 1951, c. 1013, ss. 1-3; 1953, c. 694, ss. 2, 3; 1955, c. 554, s. 9; 1957, c. 65, s. 11; 1959, c. 1264, s. 5; 1973, c. 507, s. 5; 1985, c. 116, ss. 1-3; 1993, c. 539, s. 345; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 109, s. 2.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, rewrote this section.

§ 20-97. Taxes compensatory; no additional tax.

(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns may levy not more than five dollars ($5.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab.

(a1) to (a5) Repealed by Session Laws 1983, c. 188, s. 2.

(b) No additional franchise tax, license tax, or other fee shall be imposed by the State against any franchise motor vehicle carrier taxed under this Article nor shall any county, city or town impose a franchise tax or other fee upon them, except that cities and towns may levy a license tax not in excess of fifteen dollars ($15.00) per year on each vehicle operated in such city as a taxicab as provided in subsection (a) hereof.

(c) Repealed by Session Laws 1993, c. 321, s. 146, effective July 1, 1993. (1937, c. 407, s. 61; 1941, c. 36; 1943, c. 639, ss. 3, 4; 1975, c. 716, s. 5; 1977, c. 433, s. 1; c. 880, s. 1; 1979, c. 173, s. 1; c. 216, s. 1; c. 217; c. 248, s. 1; c. 398; c. 400, s. 1; c. 458; c. 530, s. 1; c. 790; 1979, 2nd Sess., c. 1152; c. 1153, s. 1; c. 1155, s. 1; c. 1189; c. 1308, s. 1; 1981, cc. 74, 129, 210, 228, 310, 311, 312, 315, 368, 370, s. 10; c. 415, s. 10; cc. 857, 858, 991; 1981 (Reg. Sess., 1982), cc. 1202, 1250; 1983, cc. 9, 75; c. 106, s. 1; c. 188, ss. 1, 2; 1993, c. 321, s. 146; c. 456, s. 1.)

Local Modification. — Alleghany: 1993, c. 456, s. 1.1, 1993 (Reg. Sess., 1994), c. 761, s. 9; Pamlico: 1993 (Reg. Sess., 1994), c. 751, s. 4; town of Carrboro: 1995, c. 339, s. 5.1; town of Chapel Hill: 1995, c. 339, s. 4.1.

By virtue of Session Laws 1995, c. 34, s. 4, City of Roanoke Rapids: 1989, c. 570 should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — Session Laws 1993, c. 479, s. 4, repealed Session Laws 1981, c. 310, which had amended this section by adding the Town of Enfield to a list of cities.

Part 8. Anti-Theft and Enforcement Provisions.

§ 20-102.1. False report of theft or conversion a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-106. Receiving or transferring stolen vehicles.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-106.1. Fraud in connection with rental of motor vehicles.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-106.2. Sublease and loan assumption arranging regulated.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-107. Injuring or tampering with vehicle.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-108. Vehicles or component parts of vehicles without manufacturer's numbers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-109. Altering or changing engine or other numbers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-109.1. Surrender of titles to salvage vehicles.

(a) Option to Keep Title. — When a vehicle is damaged to the extent that it becomes a salvage vehicle and the owner submits a claim for the damages to an insurer, the insurer must determine whether the owner wants to keep the vehicle after payment of the claim. If the owner does not want to keep the vehicle after payment of the claim, the procedures in subsection (b) of this section apply. If the owner wants to keep the vehicle after payment of the claim, the procedures in subsection (c) of this section apply.

(b) Transfer to Insurer. — If a salvage vehicle owner does not want to keep the vehicle, the owner must assign the vehicle's certificate of title to the insurer when the insurer pays the claim. The insurer must send the assigned title to the Division within 10 days after receiving it from the vehicle owner. The Division must then send the insurer a form to use to transfer title to the vehicle from the insurer to a person who buys the vehicle from the insurer. If the insurer sells the vehicle, the insurer must complete the form and give it to the buyer. If the buyer rebuilds the vehicle, the buyer may apply for a new certificate of title to the vehicle.

(c) Owner Keeps Vehicle. — If a salvage vehicle owner wants to keep the vehicle, the insurer must give the owner an owner-retained salvage form. The owner must complete the form and give it to the insurer when the insurer pays the claim. The owner's signature on the owner-retained salvage form must be notarized. The insurer must send the completed form to the Division within 10 days after receiving it from the vehicle owner. The Division must then note in its vehicle registration records that the vehicle listed on the form is a salvage vehicle.

(d) Theft Claim on Salvage Vehicle. — An insurer that pays a theft loss claim on a vehicle and, upon recovery of the vehicle, determines that the vehicle has been damaged to the extent that it is a salvage vehicle must send the vehicle's certificate of title to the Division within 10 days after making the determination. The Division and the insurer must then follow the procedures set in subsection (b) of this section.

(e) Out-of-State Vehicle. — A person who acquires a salvage vehicle that is registered in a state that does not require surrender of the vehicle's certificate of title must send the title to the Division within 10 days after the vehicle enters this State. The Division and the person must then follow the procedures set in subsection (b) of this section.

(f) Sanctions. — Violation of this section is a Class 1 misdemeanor. In addition to this criminal sanction, a person who violates this section is subject to a civil penalty of up to one hundred dollars ($100.00), to be imposed in the discretion of the Commissioner.

(g) Fee. — G.S. 20-85 sets the fee for issuing a salvage certificate of title. (1973, c. 1095, s. 1; 1975, c. 716, s. 5; c. 799; 1983, c. 713, s. 94; 1989, c. 455, s. 5; 1993, c. 539, s. 350; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 50, s. 3; c. 517, s. 33.1.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1995, c. 517, s. 41, contains a severability clause.

Effect of Amendments. —

Session Laws 1995, c. 50, s. 3, effective July 1, 1995, rewrote this section.

Session Laws 1995, c. 517, s. 33.1, effective July 1, 1995, substituted "an insurer" for "the insurer of the vehicle" following "for the damages to" in the first sentence of subsection (a).

§ 20-111. Violation of registration provisions.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-112. Making false affidavit perjury.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

§ 20-115.1. Limitations on tandem trailers and semitrailers on certain North Carolina highways.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-116. Size of vehicles and loads.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-118. Weight of vehicles and load.

(a) For the purposes of this section, the following definitions shall apply:

(1) Single-axle weight. — The gross weight transmitted by all wheels whose centers may be included between two parallel

transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) Tandem-axle weight. — The gross weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

(3) Axle group. — Any two or more consecutive axles on a vehicle or combination of vehicles.

(4) Gross weight. — The weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon.

(5) Light-traffic roads. — Any highway on the State Highway System, excepting routes designated I, U.S. or N.C., posted by the Department of Transportation to limit the axle weight below the statutory limits.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles*					
*Axles**	*2 Axles*	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
4	38000					
5	38000					
6	38000					
7	38000					
8 or less	38000	38000				
more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			
15		47000	52000			
16		48000	52500	58000		
17		48500	53500	58500		
18		49500	54000	59000		
19		50000	54500	60000		
20		51000	55500	60500	66000	
21		51500	56000	61000	66500	

*Distance Between Axles**	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles*					
	2 Axles	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
22		52500	56500	61500	67000	
23		53000	57500	62500	68000	
24		54000	58000	63000	68500	74000
25		54500	58500	63500	69000	74500
26		55500	59500	64000	69500	75000
27		56000	60000	65000	70000	75500
28		57000	60500	65500	71000	76500
29		57500	61500	66000	71500	77000
30		58500	62000**	66500	72000	77500
31		59000	62500**	67500	72500	78000
32		60000	63500**	68000	73000	78500
33			64000**	68500	74000	79000
34			64500**	69000	74500	80000
35			65500**	70000	75000	
36			66000**	70500	75500	
37			66500**	71000	76000	
38			67500**	72000	77000	
39			68000	72500	77500	
40			68500	73000	78000	
41			69500	73500	78500	
42			70000	74000	79000	
43			70500	75000	80000	
44			71500	75500		
45			72000	76000		
46			72500	76500		
47			73500	77500		
48			74000	78000		
49			74500	78500		
50			75500	79000		
51			76000	80000		
52			76500			
53			77500			
54			78000			
55			78500			
56			79500			
57			80000			

*Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

**See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall

be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. — The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:

a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.

(3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.

(4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution.

b. Meats or agricultural crop products originating from a farm to first market.

c. Unprocessed forest products originating from a farm or from woodlands to first market.

d. Livestock or poultry from their point of origin to first market.

e. Livestock by-products or poultry by-products from their point of origin to a rendering plant.

f. Recyclable material from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms “recyclable” and “processing” have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

(6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.

(7) A wrecker may tow a disabled vehicle or combination of vehicles in an emergency to the nearest feasible point for parking or storage without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

(8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

(9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12, effective July 16, 1994.

(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road.

(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets one of the following descriptions, is hauling agricultural crops from the farm where they were grown to first market, is within 35 miles of that farm, does not operate on an interstate highway while hauling the crops, and does not exceed its registered weight:

a. Is a five-axle combination with a gross weight of no more than 88,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds.

(d) The Department of Transportation is authorized to abrogate certain exceptions. The exceptions provided for in G.S. 20-118(c)(4) and 20-118(c)(5) as applied to any light-traffic road may be abrogated by the Department of Transportation upon a determination of the Department of Transportation that undue damage to such light-traffic road is resulting from such vehicles exempted by G.S. 20-118(c)(4) and 20-118(c)(5). In those cases where the exemption to the light-traffic roads are abrogated by the Department of Transportation, the Department shall post the road to indicate no exemptions.

(e) Penalties. —

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision

(c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section is not punishable under G.S. 20-176.

(f) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 15, effective July 16, 1994.

(g) General Statutes 20-118 shall not be construed to permit the gross weight of any vehicle or combination in excess of the safe load carrying capacity established by the Department of Transportation on any bridge pursuant to G.S. 136-72.

(h) Tolerance. — A vehicle may exceed maximum and the inner axle-group weight limitations set forth in subdivision (b)(3) of this section by a tolerance of ten percent (10%). This exception does not authorize a vehicle to exceed either the single-axle or tandem-axle weight limitations set forth in subdivisions (b)(1) and (b)(2) of this section, or the maximum gross weight limit of 80,000 pounds. This exception does not apply to bridges posted under G.S. 136-72 or to vehicles operating on interstate highways. The tolerance allowed under this subsection does not authorize the weight of a vehicle to exceed the weight for which that vehicle is licensed under G.S. 20-88. No tolerance on the single-axle weight or the tandem-axle weight provided for in subdivisions (b)(1) and (b)(2) of this section shall be granted administratively or otherwise. The Department of Transportation shall report back to the Transportation Oversight Committee and to the General Assembly on the effects of the tolerance granted under this section, any abuses of this tolerance, and any suggested revisions to this section by that Department on or before May 1, 1998.

(i) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 16, effective July 16, 1994.

(j) Repealed by Session Laws 1987, c. 392.

(k) From September 1 through March 1 of each year, a vehicle which is equipped with a self-loading bed and which is designed and used exclusively to transport compressed seed cotton from the farm to a cotton gin may operate on the highways of the State, except interstate highways, with a tandem-axle weight not exceeding 44,000 pounds. Such vehicles shall be exempt from light-traffic road limitations only from point of origin on the light-traffic road to the nearest State-maintained road which is not posted to prohibit the transportation of statutory load limits. This exemption does not apply to restricted, posted bridge structures. (1937, c. 407, s. 82; 1943, c. 213, s. 2; cc. 726, 784; 1945, c. 242, s. 2; c. 569, s. 2; c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; c. 942, s. 1; c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 872; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044; 1969, c. 537; 1973, c. 507, s. 5; c. 1449, ss. 1, 2; 1975, c. 325; c. 373, s. 2; c. 716, s. 5; c. 735; c. 736, ss. 1-3; 1977, c. 461; c. 464, s. 34; 1977, 2nd Sess., c. 1178; 1981, c. 690, ss. 27, 28; c. 726; c. 1127, s. 53.1; 1983, c. 407; c. 724, s. 1; 1983 (Reg. Sess., 1984), c. 1116, ss. 105-109; 1985, c. 54; c. 274; 1987, c. 392; c. 707, ss. 1-4; 1991, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 905, s. 1; 1993, c. 426, ss. 1, 2; c. 470, s. 1; c. 533, s. 11; 1993 (Reg. Sess., 1994), c. 761, ss. 10-16; 1995, c. 109, s. 3; c. 163, s. 4; c. 332, ss. 1-3 ; c. 509, s. 135.1(b).)

Editor's Note. — The second Editor's Note under this section in the main pamphlet may be disregarded.

Session Laws 1995, c. 332, s. 4, effective June 27, 1995, repealed Session Laws 1995, c. 109, s. 3, effective October 1, 1995, which would have amended subdivision (e)(3) by inserting "or (b)(4)" following "subdivision (b)(3)."

Session Laws 1945, c. 509, s. 135.1(b) corrected the introductory language of Session Laws 1995, c. 163, s. 4.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, in subdivision (c)(1), substituted "the consecutive sets" for "such consecutive sets" in the first sentence, and deleted the second and third sentences, which provided for an exception for tank trailers, dump trailers, and ocean going transport containers; rewrote subdivision (c)(5); repealed subdivision (c)(9) and subsections (f) and (i); rewrote subdivision (c)(12), repealing subdivision (c)(12)b. therein; and, in subsection (e), rewrote subdivisions (2), (4), and (5).

Session Laws 1995, c. 163, s. 4, effective June 5, 1995, as amended by Session Laws 1995, c. 509, s. 135.1(b), inserted "does not operate on an interstate highway while hauling the crops" following "of that farm" in subdivision (c)(12).

Session Laws 1995, c. 332, ss. 1-3, effective June 27, 1995, deleted "Including all Tolerances" from the end of the heading to the table of maximum weights included in subdivision (b)(3); rewrote subdivision (e)(3); and rewrote subsection (h).

Session Laws 1995, c. 509, s. 135.1(b) amended the introductory language of Session Laws 1995, c. 163, s. 4, which purported to amend subdivision (b)(12).

§ 20-118.1. Officers may weigh vehicles and require overloads to be removed.

A law enforcement officer may stop and weigh a vehicle to determine if the vehicle's weight is in compliance with the vehicle's declared gross weight and the weight limits set in this Part. The officer may require the driver of the vehicle to drive to a scale located within five miles of where the officer stopped the vehicle.

If the vehicle's weight exceeds the amount allowable, the officer may detain the vehicle until the overload has been removed. Any property removed from a vehicle because the vehicle was overloaded is the responsibility of the owner or operator of the vehicle. The State is not liable for damage to or loss of the removed property.

Failure to permit a vehicle to be weighed or to remove an overload is a misdemeanor of the Class set in G.S. 20-176. An officer must weigh a vehicle with a scale that has been approved by the Department of Agriculture. (1927, c. 148, s. 37; 1949, c. 1207, s. 3; 1951, c. 1013, s. 4; 1979, c. 436, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1259, s. 2; 1993, c. 539, s. 356; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 109, s. 4.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1995 amendment, effective October 1, 1995, rewrote this section.

§ 20-119. Special permits for vehicles of excessive size, weight, or number of units; fees.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-120. Operation of flat trucks on State highways regulated; trucks hauling leaf tobacco in barrels or hogsheads.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-124. Brakes.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

§ 20-125. Horns and warning devices.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, and it shall be unlawful, except as otherwise provided in this section, for any vehicle to be equipped with or for any person to use upon a vehicle any siren, compression or spark plug whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonable loud or harsh sound by means of a horn or other warning device. All such horns and warning devices shall be maintained in good working order and shall conform to regulation not inconsistent with this section to be promulgated by the Commissioner.

(b) Every vehicle owned and operated by a police department or by the Department of Crime Control and Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries and used exclusively for law enforcement purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization.

(c) Repealed by Session Laws 1979, c. 653, s. 2. (1937, c. 407, s. 88; 1951, cc. 392, 1161; 1955, c. 1224; 1959, c. 166, s. 1; c. 494; c. 1170, s. 1; c. 1209; 1965, c. 257; 1975, c. 588; c. 734, s. 15; 1977, c. 52, s. 1; c. 438, s. 1; 1979, c. 653, s. 2; 1981, c. 964, s. 19; 1983, c. 32, s. 2; c. 768, s. 5; 1987, c. 266; 1989, c. 537; 1989 (Reg. Sess., 1990), c. 1020, s. 1; 1993 (Reg. Sess., 1994), c. 719, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 7, 1994, inserted "or by the Division of Emergency Management" in the first paragraph of subsection (b).

§ 20-125.1. Directional signals.

OPINIONS OF ATTORNEY GENERAL

All farm trailers must be equipped with a stop lamp activated by the foot brake of the towing unit when operated upon the highways of this State. Additional lights or reflectors required depend on the time of day of operation, the atmospheric and weather conditions, the gross weight of the trailer and whether or not the trailer and load obscure the directional signals or stop light of the towing vehicle. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

§ 20-127. Windows and windshield wipers.

(a) Windshield Wipers. — A vehicle that is operated on a highway and has a windshield must have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper must be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers must be in good working order.

(b) Window Tinting Restrictions. — A window of a vehicle that is operated on a highway or a public vehicular area must comply with this subsection. The windshield of the vehicle may be tinted only along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. Any other window of the vehicle may be tinted in accordance with the following restrictions:

(1) The total light transmission of the tinted window must be at least thirty-five percent (35%). A vehicle window that, by use of a light meter approved by the Commissioner, measures a total light transmission of more than thirty-two percent (32%) is conclusively presumed to meet this restriction.

(2) The light reflectance of the tinted window must be twenty percent (20%) or less.

(3) Tinted film or another material used to tint the window must be nonreflective and must be a color other than red, yellow, or amber.

(c) Tinting Exceptions. — The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

(1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.

(2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.

(3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.

(4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.

(5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.

(6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).

(7) A window of a limousine.

(8) A window of a law enforcement vehicle.

(9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.

(10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.

(d) Violations. — A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

(1) Applies tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in this section.

(2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section.

(e) Defense. — It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge and the window now meets the window tinting restrictions. To assert this defense, the person charged must produce in court, or submit to the prosecuting attorney before trial, a certificate from the Division of Motor Vehicles or the Highway Patrol showing that the window complies with the restrictions. (1937, c. 407, s. 90; 1953, c. 1254; 1955, c. 1157, s. 2; 1959, c. 1264, s. 7; 1967, c. 1077; 1985, c. 789; 1985 (Reg. Sess., 1986), c. 997; 1987, c. 567; 1987 (Reg. Sess., 1988), c. 1082, ss. 7-8.1; 1989, c. 770, s. 66; 1991 (Reg. Sess., 1992), c. 1007, s. 34; 1993, c. 539, s. 360; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 683, s. 1; c. 754, s. 4; 1995, c. 14, s. 1; c. 473, s. 1.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

The designations of subsections (d) and (e) were assigned by the Revisor of Statutes, as the amendment by Session Laws 1995, c. 473, s. 1, contained two subsection (c)'s.

Session Laws 1993 (Reg. Sess., 1994), c. 683, s. 1, rewrote former subsections (c) through (i) and added former subsections (j) and (k).

Session Laws 1995, c. 14, s. 1, effective March 15, 1995, changed the effective date of amendments by Session Laws 1993 (Reg. Sess., 1994), c. 683, s. 1, from March 1, 1995 to November 1, 1995. Subsequently, this section was rewritten by Session Laws 1995, c. 473, s. 1, effective November 1, 1995.

Effect of Amendments. —

Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 4, effective October 1, 1994, repealed a former subsection (e).

Session Laws 1995, c. 473, s. 1, effective November 1, 1995, rewrote the catchline of this section, which formerly read "Windshields must be unobstructed", and rewrote the text of this section.

§ 20-128.2. Motor vehicle emission standards.

(a) The rules and regulations promulgated pursuant to G.S. 143-215.107(a)(6) shall be implemented when the Environmental Management Commission certifies to the Commissioner of Motor Vehicles that the ambient air quality in an area will be improved by the implementation of a motor vehicle inspection/maintenance program within a specified county or group of counties, as necessary to effect attainment or preclude violations of the National Ambient Air Quality Standards for carbon monoxide or ozone; provided the Environmental Management Commission may prescribe different vehicle emission limits for different areas as may be necessary and appropriate to meet the stated purposes of this section.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 5, effective October 1, 1994. (1979, 2nd Sess., c. 1180, s. 2; 1989, c. 391, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, repealed subsection (b).

§ 20-129. Required lighting equipment of vehicles.

OPINIONS OF ATTORNEY GENERAL

All farm trailers must be equipped with a stop lamp activated by the foot brake of the towing unit when operated upon the highways of this State. Additional lights or reflectors required depend on the time of day of operation, the atmospheric and weather conditions, the gross weight of the trailer and whether or not the trailer and load obscure the directional signals or stop light of the towing vehicle. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police car;
(2) A highway patrol car;
(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;
(4) An ambulance;
(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for transplantation;
(6) A fire-fighting vehicle;
(7) A school bus;

(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;

(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;

(10) A vehicle operated by medical doctors or anesthetists in emergencies;

(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;

(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle;

(13) Any lights that may be prescribed by the Interstate Commerce Commission;

(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation;

(15) A vehicle operated by an emergency medical service as an emergency support vehicle; and

(16) A State emergency management vehicle.

(c) It is unlawful for any person to install or activate or operate a blue light in or on any vehicle in this State. It is unlawful for any person to possess a blue light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "blue light" means an operable blue light not sealed in the manufacturer's original package which:

(1) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and

(2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

(d) The provisions of subsection (c) of this section do not apply to a publicly owned vehicle used primarily for law-enforcement purposes or any other vehicle used primarily by law-enforcement officers in the performance of their official duties.

(e) Violation of subsection (a) or (c) of this section is a Class 1 misdemeanor. (1943, c. 726; 1947, c. 1032; 1953, c. 354; 1955, c. 528; 1957, c. 65, s. 11; 1959, c. 166, s. 2; c. 1170, s. 2; 1967, c. 651, s. 1; 1971, c. 1214; 1977, c. 52, s. 2; c. 438, s. 2; 1979, c. 653, s. 1; c. 887; 1983, c. 32, s. 1; c. 768, s. 6; 1985 (Reg. Sess., 1986), c. 1027, s. 50; 1989, c. 537, s. 2; 1989 (Reg. Sess., 1990), c. 1020, s. 2; 1991, c. 263, s. 1; 1993, c. 539, s. 361; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 719, s. 1; 1995, c. 168, s. 1.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective July 7, 1994, deleted "and" from the end of subdivision (b)(14); added "and" at the end of subdivision (b)(15); and added subdivision (b)(16).

The 1995 amendment, effective October 1, 1995, substituted "blood, human tissues, or organs" for "human tissues and organs" in subdivision (b)(5).

§ 20-132. Acetylene lights.

Motor vehicles eligible for a Historic Vehicle Owner special registration plate under G.S. 20-79.4 may be equipped with two acetylene headlamps of approximately equal candlepower when equipped with clear plane-glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners not more and not less and which do not project a glaring or dazzling light into the eyes of approaching drivers. (1937, c. 407, s. 95; 1995, c. 379, s. 18.1.)

Effect of Amendments. — The 1995 amendment, effective July 6, 1995, but not affecting pending litigation, added "eligible for a Historic Vehicle Owner special registration plate under G.S. 20-79.4".

§ 20-135.2A. Seat belt use mandatory.

(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly fastened about his body at all times when the vehicle is in forward motion on a street or highway in this State. Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (1) under 16 years of age and (2) not required to be restrained in accordance with G.S. 20-137.1, shall have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S. 20-137.1 shall be secured as required by that section.

(b) "Passenger Motor Vehicle," as used in this section, means a motor vehicle with motive power designed for carrying 10 passengers or fewer, but does not include a motorcycle, a motorized pedacycle or a trailer.

(c) This section shall not apply to any of the following:

(1) A driver or occupant with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints;

(2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route;

(3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour;

(4) Any vehicle registered and licensed as a property-carrying vehicle in accordance with G.S. 20-88, while being used for agricultural or commercial purposes; or

(5) A motor vehicle not required to be equipped with seat safety belts under federal law.

(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section or as justification for the stop of a vehicle or detention of a vehicle operator and passengers.

(e) Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(f) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.

(g) The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this section as an important means of reducing the severity of injury to the users of restraint devices and on the requirements and penalties specified in this law.

(h) The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this section and shall include a report of findings in its report on highway safety no later than October 1, 1988. (1985, c. 222, s. 1; 1987, c. 623; 1991, c. 448, s. 1; 1994, Ex. Sess., c. 5, s. 1.)

Effect of Amendments. — The 1994 Extra Session amendment, effective March 3, 1994, and applicable to any trial, action, or proceeding commenced on or after that date, added "or as justification for the stop of a vehicle or detention of a vehicle operator and passengers" in subsection (d).

CASE NOTES

This section precludes the introduction of any evidence regarding seat belt use, etc. —

The evidence of the failure of the defendant to use her seat belt was not admissible in a DWI trial. State v. Williams, 113 N.C. App. 686, 440 S.E.2d 324 (1994).

In the 1987 amendment to subsection (d) not only did the General Assembly retain the exclusion of the seat belt defense in civil cases, but expanded the act so as to exclude evidence of the failure to have a fastened seat belt in place in other criminal proceedings. State v. Williams, 113 N.C. App. 686, 440 S.E.2d 324 (1994).

§ 20-135.2B. Transporting children under 12 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.

(a) The operator of a vehicle having an open bed or open cargo area shall insure that no child under 12 years of age is transported in the bed or cargo area of that vehicle. An open bed or open cargo area is a bed or cargo area without permanent overhead restraining construction.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) An adult is present in the bed or cargo area of the vehicle and is supervising the child.
(2) The child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208, installed to support a load strength of not less than 5,000 pounds for each belt, and of a type approved by the Commissioner.
(3) An emergency situation exists.
(4) The vehicle is being operated in a parade pursuant to a valid permit.
(5) The vehicle is being operated in an agricultural enterprise.
(6) The vehicle is being operated in a county that has no incorporated area with a population in excess of 3,500.

(c) Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs..

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section. (1993 (Reg. Sess., 1994), c. 672, s. 1; 1995, c. 163, s. 7.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 672, s. 4, made this section effective January 1, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 672, which added this section, in s. 2 provides: "The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designated to encourage compliance with this act and to inform the public on the requirements and penalties specified in this law."

Session Laws 1993 (Reg. Sess., 1994), c. 672, which added this section, in s. 3 provides: "The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this act and shall include a report of findings in its report on highway safety no later than January 1, 1998."

Effect of Amendments. — The 1995 amendment, effective June 5, 1995, substituted "does not apply in any of the following circumstances" for "shall not apply when" in the introductory language of subsection (b); deleted "or" at the end of subdivision (b)(5); substituted "that" for "which" following "county" in subdivision (b)(6); and made other stylistic changes in subsection (b).

§ 20-136. Smoke screens.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-137: Repealed by Session Laws 1995, c. 379, s. 18.2, effective July 1, 1995.

§ 20-137.1. Child restraint systems required.

(a) Every driver who is transporting a child of less than 12 years of age shall have the child properly secured in a child passenger restraint system (car safety seat) which meets federal standards applicable at the time of its manufacture. The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.

(b) The provisions of this section shall not apply: (i) to ambulances or other emergency vehicles; (ii) when the child's personal needs are being attended to; (iii) if all seating positions equipped with child passenger restraint systems or seat belts are occupied; or (iv) to vehicles which are not required by federal law or regulation to be equipped with seat belts.

(c) Any person convicted of violating this section may be punished by a fine not to exceed twenty-five dollars ($25.00). No driver charged under this section for failure to have a child under four years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system.

(d) No driver license points or insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence. (1981, c. 804, ss. 1, 4, 5; 1985, c. 218; 1993 (Reg. Sess., 1994), c. 748, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1995, in subsection (a), in the first sentence substituted "12" for "six", substituted "meets" for "met applicable", and inserted "applicable", and in the second sentence substituted "four" for "three"; in subsection (b) deleted former subdivision (i) which read "to vehicles registered in another state or jurisdiction" and renumbered the remaining subdivisions accordingly; and in the second sentence of subsection (c) substituted "four" for "three".

§ 20-137.2. Operation of vehicles resembling law-enforcement vehicles unlawful; punishment.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 10. Operation of Vehicles and Rules of the Road.

§ 20-138.1. Impaired driving.

CASE NOTES

I. In General.
II. Driving Under the Influence.
V. Instructions.

I. IN GENERAL.

Parking Lot as Public Vehicular Area. — In driving while impaired (DWI) prosecution, it was reversible error to instruct that club's parking lot was a public vehicular area as a matter of law as this removed an essential element of the offense charged from the jury's consideration. State v. Snyder, 118 N.C. App. 540, 455 S.E.2d 914 (1995).

Cited in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994); Camalier v. Jeffries, 113 N.C. App. 303, 438 S.E.2d 427 (1994); State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994); State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610, cert. denied, 337 N.C. 805, 449 S.E.2d 751 (1994); Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542, temporary stay granted pending appeal, 338 N.C. 312, 449 S.E.2d 473 (1994); State v. Turner, 117 N.C. App. 457, 451 S.E.2d 19 (1994).

II. DRIVING UNDER THE INFLUENCE.

Situs, "any highway, any street, or any public vehicular area," is an essential element of the offense of driving while impaired; hence, changing felony DWI indictment from "street or highway" to "on a highway of public vehicular area" altered an essential element of the offense, and thus improperly amended the indictment. State v. Snyder, 118 N.C. App. 540, 455 S.E.2d 914 (1995).

Evidence of Impairment Held Sufficient. —

Where trooper could have placed defendant under arrest for not carrying his driver's license, but merely choose to ask defendant to step back to the patrol car so that he could check defendant's license information and so that he could further investigate defendant's intoxication based upon defendant's unsteady movements and the smell of alcohol, and after defendant failed the field sobriety tests he was placed under arrest and advised of his rights, the seizure was constitutionally permissible and there was sufficient probable cause for arrest. State v. Johnston, 115 N.C. App. 711, 446 S.E.2d 135 (1994).

V. INSTRUCTIONS.

Instruction Held Erroneous. —

Judgment convicting defendant of driving while impaired would be vacated where magistrate judge instructed the jury that it could rely on either of two independent grounds in determining whether defendant drove his vehicle while under the influence, as the jury could not legally convict him on the second ground, i.e., that the defendant had a blood alcohol concentration of at least .10 percent, since the court had suppressed evidence of blood alcohol concentration. United States v. Harris, 27 F.3d 111 (4th Cir. 1994).

§ 20-138.2. Impaired driving in commercial vehicle.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.

(a) Offense. — It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. — An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. — The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable must be imposed.

(d) Limited Driving Privilege. — A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction. (1983, c. 435, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 11; 1993, c. 539, s. 364; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 506, s. 6.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Effect of Amendments. —

The 1995 amendment, effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date, substituted "person less than 21 years old" for "provisional licensee" in the catchline and twice in subsection (a); and added subsection (d).

§ 20-138.5. Habitual impaired driving.

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(b) A person convicted of violating this section shall be punished as a Class G felon. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.

(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(d) A person convicted under this section shall have his license permanently revoked.

(e) If a person is convicted under this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of impaired driving becomes property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.2. In applying the procedure set out in that statute, an owner or a holder of a security interest is considered an innocent party with respect to a motor vehicle subject to forfeiture under this subsection if any of the following applies:

(1) The owner or holder of the security interest did not know and had no reason to know that the defendant had been convicted within the previous seven years of three or more offenses involving impaired driving.

(2) The defendant drove the motor vehicle without the consent of the owner or the holder of the security interest. (1989 (Reg. Sess., 1990), c. 1039, s. 7; 1993, c. 539, s. 1258; 1994, Ex. Sess., c. 14, s. 32; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 34.1; c. 767, s. 32.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act [October 1, 1994] are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. —

The 1994 Extra Session amendment by ch. 14, s. 32, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses occurring on or after that date, substituted "Class I felon" for "Class I" in subsection (b).

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 34.1, effective October 1, 1994, and applicable to offenses occurring on or after that date, added subsection (e).

Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 32, effective October 1, 1994, substituted "Class G felon" for "Class I felon" in subsection (b).

Legal Periodicals. — For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

CASE NOTES

Superior Court Jurisdiction. — The offense of habitual impaired driving as defined in this section constitutes a separate substantive felony offense which is properly within the original exclusive jurisdiction of the superior court. State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610, cert. denied, 337 N.C. 805, 449 S.E.2d 751 (1994).

A conviction for habitual impaired driving may serve as the basis for enhancement to habitual felon status. State v. Baldwin, 117 N.C. App. 713, 453 S.E.2d 193 (1995).

Quoted in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994).

Cited in State v. Jernigan, 118 N.C. App. 240, 455 S.E.2d 163 (1995).

§ 20-138.7. Transporting an open container of alcoholic beverage after consuming alcohol.

(a) Offense. — No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(b) Subject to Implied-Consent Law. — An offense under this section is an alcohol-related offense subject to the implied- consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. — The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. — Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. — Violation of this section shall be punished as a Class 3 misdemeanor for the first offense and shall be punished as a Class 2 misdemeanor for a second or subsequent offense. A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000). Violation of this section is not a lesser included offense of impaired driving under G.S. 20- 138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. A violation of this section shall be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. — If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. — In any prosecution for a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

(h) Limited Driving Privilege. — A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction. (1995, c. 506, s. 9.)

Editor's Note. — Session Laws 1995, c. 506, s. 15, made this section effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued on or after that date.

Session Laws 1995, c. 506, which enacted this section, in s. 15 provides the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.

CASE NOTES

I. In General.
II. Administration and Use of Breathalyzer Test.

I. IN GENERAL.

Applied in State v. Garcia-Lorenzo, 110 N.C. App. 319, 430 S.E.2d 290 (1993); State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993).

Cited in Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542, temporary stay granted pending appeal, 338 N.C. 312, 449 S.E.2d 473 (1994).

II. ADMINISTRATION AND USE OF BREATHALYZER TEST.

Notification of Rights. — Though § 20-16.2 must be read in conjunction with this section to determine the procedures governing the administering of chemical analyses, § 20-16.2, and that statute alone, sets forth the procedures governing notification of rights pursuant to a chemical analysis. Nicholson v. Killens, 116 N.C. App. 473, 448 S.E.2d 542, temporary stay granted pending appeal, 338 N.C. 312, 449 S.E.2d 473 (1994).

§ 20-140. Reckless driving.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

§ 20-141. Speed restrictions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. In General.
IV. Instructions.

I. IN GENERAL.

Cited in Moreau v. Hill, 111 N.C. App. 679, 433 S.E.2d 10 (1993); Sparks v. Gilley Trucking Co., Inc., 992 F.2d 50 (4th Cir. 1993); Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

IV. INSTRUCTIONS.

Instruction on Duty to Decrease Speed. — The trial court erred by refusing to instruct the jury that defendant had a duty to decrease her speed. Welling v. Walker, 117 N.C. App. 445, 451 S.E.2d 329 (1994), cert. granted, 339 N.C. 742, 454 S.E.2d 663 (1995).

§ 20-141.3. Unlawful racing on streets and highways.

(a) It shall be unlawful for any person to operate a motor vehicle on a street or highway willfully in prearranged speed competition with another motor vehicle. Any person violating the provisions of this subsection shall be guilty of a Class 1 misdemeanor.

(b) It shall be unlawful for any person to operate a motor vehicle on a street or highway willfully in speed competition with another motor vehicle. Any person willfully violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

(c) It shall be unlawful for any person to authorize or knowingly permit a motor vehicle owned by him or under his control to be operated on a public street, highway, or thoroughfare in prearranged speed competition with another motor vehicle, or to place or receive any bet, wager, or other thing of value from the outcome of any prearranged speed competition on any public street, highway, or thoroughfare. Any person violating the provisions of this subsection shall be guilty of a Class 1 misdemeanor.

(d) The Commissioner of Motor Vehicles shall revoke the driver's license or privilege to drive of every person convicted of violating the provisions of subsection (a) or subsection (c) of this section, said revocation to be for three years; provided any person whose license has been revoked under this section may apply for a new license after 18 months from revocation. Upon filing of such application the Division may issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past 18 months and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Division may see fit to impose for the balance of the three-year revocation period, which period shall be computed from the date of the original revocation.

(e) The Commissioner may suspend the driver's license or privilege to drive of every person convicted of violating the provisions of subsection (b) of this section. Such suspension shall be for a period of time within the discretion of the Commissioner, but not to exceed one year.

(f) All suspensions and revocations made pursuant to the provisions of this section shall be in the same form and manner and shall be subject to all procedures as now provided for suspensions and revocations made under the provisions of Article 2 of Chapter 20 of the General Statutes.

(g) When any officer of the law discovers that any person has operated or is operating a motor vehicle willfully in prearranged speed competition with another motor vehicle on a street or highway, he shall seize the motor vehicle and deliver the same to the sheriff of the county in which such offense is committed, or the same shall be placed under said sheriff's constructive possession if delivery of actual possession is impractical, and the vehicle shall be held by the sheriff pending the trial of the person or persons arrested for operating such motor vehicle in violation of subsection (a) of this section. The sheriff shall restore the seized motor vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property, which bond shall be approved by said sheriff and shall be conditioned on the return of the motor vehicle to the custody of the sheriff on the day of trial of the person or persons accused. Upon the acquittal of the person charged with operating said motor vehicle willfully in prearranged speed competition with another motor vehicle, the sheriff shall return the motor vehicle to the owner thereof.

Notwithstanding the provisions for sale set out above, on petition by a lienholder, the court, in its discretion and upon such terms and conditions as it may prescribe, may allow reclamation of the vehicle by the lienholder. The lienholder shall file with the court an accounting of the proceeds of any subsequent sale of the vehicle and pay into the court any proceeds received in excess of the amount of the lien.

Upon conviction of the operator of said motor vehicle of a violation of subsection (a) of this section, the court shall order a sale at public auction of said motor vehicle and the officer making the sale, after deducting the expenses of keeping the motor vehicle, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise, at said hearing or in other proceeding brought for said purpose, as being bona fide, and shall pay the balance of the proceeds to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county. All liens against a motor vehicle sold under the provisions of this section shall be transferred from the motor vehicle to the proceeds of its sale. If, at the time of hearing, or other proceeding in which the matter is considered, the owner of the vehicle can establish to the satisfaction of the court that said motor vehicle was used in prearranged speed competition with another motor vehicle on a street or highway without the knowledge or consent of the owner, and that the owner had no reasonable grounds to believe that the motor vehicle would be used for such purpose, the court shall not order a sale of the vehicle but shall restore it to the owner, and the said owner shall, at his request, be entitled to a trial by jury upon such issues.

If the owner of said motor vehicle cannot be found, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if said owner shall not appear within 10 days after the last publication of the advertisement, the property shall be sold, or otherwise disposed of in the manner set forth in this section.

When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lienholders and other claimants to said vehicles as set out in this section. (1955, c. 1156; 1957, c. 1358; 1961, c. 354; 1963, c. 318; 1967, c. 446; 1969, c. 186, s. 3; 1973, c. 1330, s. 8; 1975, c. 716, s. 5; 1979, c. 667, s. 31; 1993, c. 539, ss. 368-370; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 163, ss. 8, 9.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to offenses occurring on or after that date, substituted "Class 1" for "Class 2" in the second sentence of subsection (a) and substituted "Class 2" for "Class 1" in the second sentence of subsection (b).

§ 20-141.4. Felony and misdemeanor death by vehicle.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-145. When speed limit not applicable.

CASE NOTES

Cited in Shaw v. v. Stroud, 13 F.3d 791 (4th Cir. 1994).

§ 20-146. Drive on right side of highway; exceptions.

CASE NOTES

But Defendant May Show Cause of Violation Was Not Negligence. — Decedent's initial act of negligence (being partially parked on the highway) justified the shift of defendant's vehicle to the left of the center line in the no passing zone; therefore, there was no negligence per se. Hurley v. Miller, 113 N.C. App. 658, 440 S.E.2d 286 (1994), rev'd on other grounds, 339 N.C. 601, 453 S.E.2d 861 (1995).

Applied in Tate v. Christy, 114 N.C. App. 45, 440 S.E.2d 858 (1994).

Cited in Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

§ 20-148. Meeting of vehicles.

CASE NOTES

Cited in Peal ex rel. Peal v. Smith, 115 N.C. App. 225, 444 S.E.2d 673 (1994).

§ 20-149. Overtaking a vehicle.

(a) The driver of any such vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of G.S. 20-150.1.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle while being lawfully overtaken on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

Failure to comply with this subsection:

(1) Is a Class 1 misdemeanor when the failure is the proximate cause of a collision resulting in serious bodily injury.

(2) Is a Class 2 misdemeanor when the failure is the proximate cause of a collision resulting in bodily injury or property damage.

(3) Is, in all other cases, an infraction. (1937, c. 407, s. 111; 1955, c. 913, s. 3; 1959, c. 247; 1973, c. 1330, s. 15; 1995, c. 283, s. 1.)

Effect of Amendments. — The 1995 amendment, effective December 1, 1995, in subsection (b) added "while being lawfully overtaken" in the first sentence, added the second sentence, and added subdivisions (b)(1), (b)(2) and (b)(3).

§ 20-150. Limitations on privilege of overtaking and passing.

CASE NOTES

I. In General.

I. IN GENERAL.

Violation Not Negligence Per Se — Decedent's initial act of negligence (being partially parked on the highway) justified the shift of defendant's vehicle to the left of the center line in the no passing zone; therefore, there was no negligence per se. Hurley v. Miller, 113 N.C. App. 658, 440 S.E.2d 286 (1994), rev'd on other grounds, 339 N.C. 601, 453 S.E.2d 861 (1995).

§ 20-151: Repealed by Session Laws 1995, c. 283, s. 2, effective December 1, 1995.

§ 20-157. Approach of police, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near police, fire department, or rescue squad vehicle or ambulance.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-162. Parking in front of private driveway, fire hydrant, fire station, intersection of curb lines or fire lane.

Local Modification. — By virtue of Session Laws 1995, c. 169, Mecklenburg: 1981, c. 99; city of Charlotte: 1981, c. 99; town of Tarboro, 1985 (Reg. Sess., 1986), c. 905, s. 2; should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

§ 20-162.1. Prima facie rule of evidence for enforcement of parking regulations.

Local Modification. — By virtue of Session Laws 1995, c. 169, Mecklenburg: 1981, c. 99; city of Charlotte, 1981, c. 99; and by virtue of Session Laws 1995, c. 73, s. 4, town of Tarboro: 1985 (Reg. Sess., 1986), c. 905, s. 1, should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

§ 20-165: Repealed by Session Laws 1995, c. 379, s. 6, effective July 6, 1995.

§ 20-166. Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-166.1. Reports and investigations required in event of accident.

(a) Notice of Accident. — The driver of a vehicle involved in a reportable accident must immediately, by the quickest means of communication, notify the appropriate law enforcement agency of the accident. If the accident occurred in a city or town, the appropriate agency is the police department of the city or town. If the accident occurred outside a city or town, the appropriate agency is the State Highway Patrol or the sheriff's office or other qualified rural police of the county where the accident occurred.

(b) Insurance Verification. — When requested to do so by the Division, the driver of a vehicle involved in a reportable accident must furnish proof of financial responsibility.

(c) Parked Vehicle. — The driver of a motor vehicle that collides with another motor vehicle left parked or unattended on a highway of this State must report the collision to the owner of the parked or unattended motor vehicle. This requirement applies to an accident that is not a reportable accident as well as to one that is a reportable accident. The report may be made orally or in writing, must be made within 48 hours of the accident, and must include the following:

(1) The time, date, and place of the accident.

(2) The driver's name, address, and drivers license number.
(3) The registration plate number of the vehicle being operated by the driver at the time of the accident.

If the driver makes a written report to the owner of the parked or unattended vehicle and the report is not given to the owner at the scene of the accident, the report must be sent to the owner by certified mail, return receipt requested, and a copy of the report must be sent to the Division.

(d) Repealed by Session Laws 1995, c. 191, s. 2, effective January 1, 1996.

(e) Investigation by Officer. — The appropriate law enforcement agency must investigate a reportable accident. A law-enforcement officer who investigates a reportable accident, whether at the scene of the accident or by subsequent investigations and interviews, must make a written report of the accident within 24 hours of the accident and must forward it as required by this subsection. The report must contain information on financial responsibility for the vehicle driven by the person whom the officer identified as at fault for the accident.

If the officer writing the report is a member of the State Highway Patrol, the officer must forward the report to the Division. If the officer is not a member of the State Highway Patrol, the officer must forward the report to the local law enforcement agency for the area where the accident occurred. A local law enforcement agency that receives an accident report must forward it to the Division within 10 days after receiving the report.

When a person injured in a reportable accident dies as a result of the accident within 12 months after the accident and the death was not reported in the original report, the law enforcement officer investigating the accident must file a supplemental report that includes the death.

(f) Medical Personnel. — A county medical examiner must report to the Division the death of any person in a reportable accident and the circumstances of the accident. The medical examiner must file the report within five days after the death. A hospital must notify the medical examiner of the county in which the accident occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a reportable accident.

(g) Repealed by Session Laws 1987, c. 49.

(h) Forms. — The Division must provide forms to persons required to make reports under this section and the reports must be made on the forms provided. The forms must ask for the following information about a reportable accident:
(1) The cause of the accident.
(2) The conditions existing at the time of the accident.
(3) The persons and vehicles involved.

(i) Effect of Report. — A report of an accident made under this section by a person who is not a law enforcement officer is without prejudice, is for the use of the Division, and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of the accident. Any other report of an accident made under this section may be used in any manner as evidence, or for any other purpose, in any trial, civil or criminal, as permitted under the rules of evidence. At the demand of a court, the Division must give the court a properly executed certificate stating that a particular accident report has or has not been filed with the Division solely to prove a compliance with this section.

The reports made by persons who are not law enforcement officers or medical examiners are not public records. The reports made by law enforcement officers and medical examiners are public records and are open to inspection by the general public at all reasonable times. The Division must give a certified copy of one of these reports to a member of the general public who requests a copy and pays the fee set in G.S. 20-42.

(j) Statistics. — The Division may periodically publish statistical information on motor vehicle accidents based on information in accident reports. The Division may conduct detailed research to determine more fully the cause and control of accidents and may conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and accident prevention.

(k) Punishment. — A violation of any provision of this section is a misdemeanor of the Class set in G.S. 20-176. (1953, c. 1340, s. 2; 1955, c. 913, s. 9; 1963, c. 1249; 1965, c. 577; 1971, c. 55; c. 763, s. 1; c. 958, ss. 2, 3; 1973, c. 1133, ss. 1, 2; c. 1330, s. 29; 1975, c. 307; c. 716, s. 5; 1979, c. 667, s. 33; 1981, c. 690, s. 14; 1983, c. 229, ss. 1, 2; 1985, c. 764, s. 33; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 49; 1993, c. 539, ss. 376, 377; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 191, s. 2.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, rewrote this section.

§ 20-167.1. Transportation of spent nuclear fuel.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 11. Pedestrians' Rights and Duties.

§ 20-174. Crossing at other than crosswalks; walking along highway.

CASE NOTES

I. In General.

I. IN GENERAL.

Subsection (a) was inapplicable to a case involving plaintiff who was struck by defendant's truck as she crossed in front of supermarket parking lot because plaintiff was crossing a public vehicular area rather than a roadway. The trial court therefore erred by imposing on plaintiff a duty to yield the right-of-way and by allowing the jury to evaluate plaintiff's conduct using an improper standard of care. Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993).

§ 20-174.1. Standing, sitting or lying upon highways or streets prohibited.

(a) No person shall willfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic.

(b) Violation of this section is a Class 2 misdemeanor. (1965, c. 137; 1969, c. 1012; 1993 (Reg. Sess., 1994), c. 761, s. 17.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, rewrote subsection (b).

Part 12. Sentencing; Penalties.

§ 20-176. Penalty for misdemeanor or infraction.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(a) Sentencing Hearing Required. — After a conviction for impaired driving under G.S. 20-138.1, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. — At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. The judge must impose the Level One punishment under subsection (g) of this section if the judge determines that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if the judge determines that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:
  a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
  b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

  Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(d) Aggravating Factors to Be Weighed. — The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension.
(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
(8) Passing a stopped school bus in violation of G.S. 20-217.
(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. — The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.
(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. — If the judge in the sentencing hearing determines that there are no grossly aggravating factors, he must weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).
(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he must note in the judgment any factors found and his finding that the defendant is subject

to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level must be imposed.

(f1) Aider and Abettor Punishment. — Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. — Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge must determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. — A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least 14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. — A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least seven days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. — A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Not operate a motor vehicle for a term of at least 90 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(j) Level Four Punishment. — A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Not operate a motor vehicle for a term of 60 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k) Level Five Punishment. — A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
(3) Not operate a motor vehicle for a term of 30 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k1) Credit for Inpatient Treatment. — Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. The credit may not be used more than once during the seven-year period immediately preceding the date of the offense. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(*l*) Repealed by Session Laws 1989, c. 691, s. 3, effective January 1, 1990.

(m) Repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996.

(n) Time Limits for Performance of Community Service. — If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service must be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or
(2) Within 60 days, if the amount of community service required is 48 hours; or
(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. — In the sentencing hearing, the State must prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant must prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he must give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge must afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. — For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
(2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.
(3) The defendant may not be released on parole unless he is otherwise eligible and has served the mandatory minimum period of imprisonment.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20, effective October 1, 1991.

(r) Supervised Probation Terminated. — Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets two conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this section.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or
(2) Repealed by Session Laws 1995 c. 496, s. 2, effective January 1, 1996.
(3) Payment of any fines, court costs, and fees; or
(4) Any combination of these conditions.

(s) Method of Serving Sentence. — The judge in his discretion may order a term of imprisonment or community service to be served on weekends, even if the sentence cannot be served in consecutive sequence.

(t) Repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996. (1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5; 1971, c. 619, s. 16; c. 1133, s. 1; 1975, c. 716, s. 5; 1977, c. 125; 1977, 2nd Sess., c. 1222, s. 1; 1979, c. 453, ss. 1, 2; c. 903, ss. 1, 2; 1981, c. 466, ss. 4-6; 1983, c. 435, s. 29; 1983 (Reg. Sess., 1984), c. 1101, ss. 21-29, 36; 1985, c. 706, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 201(d); 1987, c. 139; c. 352, s. 1; c. 797, s. 1; 1989, c. 548, ss. 1, 2; c. 691, ss. 1-3, 4.1; 1989 (Reg. Sess., 1990), c. 1031, ss. 1, 2; c. 1039, s. 6; 1991, c. 636, s. 19(b), (c); c. 726, ss. 20, 21; 1993, c. 285, s. 9; 1995, c. 191, s. 3; c. 496, ss. 2-7; c. 506, ss. 11-13.)

Editor's Note. —

Session Laws 1995, c. 506, s. 13, effective September 15, 1995, substituted "0.13" for ".15" in the third sentence of the third paragraph of subsection (m) which was repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996. As amended, that sentence read: "An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was 0.13 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offence with five years."

Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Effect of Amendments. — Session Laws 1995, c. 191, s. 3, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, substituted "a reportable accident" for "an accident causing property damage in excess of five hundred dollars ($500.00) or personal injury" in subdivision (d)(3).

Session Laws 1995, c. 496, ss. 2 through 7, effective January 1, 1996, and applicable to offenses occurring on or after that date, in subsections (g) and (h) rewrote the third sentences of both subsections, and deleted the last sentences, regarding the judge including in the record his reasons for not placing on probation a defendant who would otherwise be subject to the provisions of subsection (m); in subsections (i), (j) and (k), in the second paragraphs of those subsections added the first sentences, and rewrote the second sentences; and repealed subsections (m) and (t), and subdivision (r)(2), regarding substance abuse assessments.

Session Laws 1995, c. 506, ss. 11 through 13, effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued on or after that date, substituted "0.16" for "0.20" in subdivision (d)(1); substituted "0.09" for "0.11" in subdivision (e)(1); and substituted "0.13" for ".15" in the third sentence of the third paragraph of former subsection (m).

CASE NOTES

Alcoholics Anonymous is not a "treatment program," it is, in fact, a support group for recovering alcoholics. State v. McGill, 114 N.C. App. 479, 442 S.E.2d 166 (1994).

The North Carolina legislature has accorded the trial court broad discretion in subsection (k) in sentencing a person convicted of driving under the influence, subject to one important restriction regarding punishment: initially the state trial court cannot imprison the defendant more than 24 hours. This mandatory restriction in a very real sense is the maximum sentence a state trial judge can impose under subsection (k), unless the defendant later violates a condition of probation. United States v. Harris, 27 F.3d 111 (4th Cir. 1994).

The "like punishment" clause of 18 U.S.C. § 13, the federal Assimilative Crimes Act, places the same restriction on a federal court that is implementing the Assimilative Crimes Act. Thus, the federal court, like its state counterpart, cannot imprison a defendant more than 24 hours, unless he violates probation, nor can the federal court impose a fine in excess of $100. United States v. Harris, 27 F.3d 111 (4th Cir. 1994).

Applied in State v. Gunter, 111 N.C. App. 621, 433 S.E.2d 191 (1993).

§ 20-179.2: Repealed by Session Laws 1995, c. 496, s. 8, effective January 1, 1996.

§ 20-179.3. Limited driving privilege.

(a) Definition of Limited Driving Privilege. — A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:

(1) His employment.
(2) The maintenance of his household.
(3) His education.
(4) His court-ordered treatment or assessment.
(5) Community service ordered as a condition of the person's probation.

(6) Emergency medical care.

(b) Eligibility. —

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type specified in G.S. 20-179(m).

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. — A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation.

(d) Application for and Scheduling of Subsequent Hearing. — The application for a limited driving privilege made at any time after the day of sentencing must be filed with the clerk in duplicate, and no hearing scheduled may be held until a reasonable time after the clerk files a copy of the application with the district attorney's office. The hearing must be scheduled before:

(1) The presiding judge at the applicant's trial if that judge is assigned to a court in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the conviction for impaired driving was imposed.
(2) The senior regular resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in superior court.
(3) The chief district court judge of the district court district as defined in G.S. 7A-133 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in district court.

If the applicant was convicted of an offense in another jurisdiction, the hearing must be scheduled before the chief district court judge of the district court district as defined in G.S. 7A-133 in which he resides. G.S. 20-16.2(e1) governs the judge before whom a hearing is scheduled if the revocation was under G.S. 20-16.2(d). The hearing may be scheduled in any county within the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be.

(e) Limited Basis for and Effect of Privilege. — A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid.

(f) Overall Provisions on Use of Privilege. — Every limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a), and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege. If the privilege is granted, driving related to emergency medical care is authorized at any time and without restriction as to routes, but all other driving must be for a purpose and done within the restrictions specified in the privilege.

(f1) Definition of "Standard Working Hours". — Under this section, "standard working hours" are 6:00 A.M. to 8:00 P.M. on Monday through Friday.

(g) Driving for Work-Related Purposes in Standard Working Hours. — In a limited driving privilege, the court may authorize driving for work-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the applicant is not required to drive for essential work-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (g2). The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(g1) Driving for Work-Related Purposes in Nonstandard Hours. — If the applicant is required to drive during nonstandard working hours for an essential work-related purpose, he must present documentation of that fact before the judge may authorize him to drive for this purpose during those hours. If the applicant is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the judge determines that it is necessary for the applicant to drive during nonstandard hours for a work-related purpose, he may authorize the applicant to drive subject to these limitations:

(1) If the applicant is required to drive to and from a specific place of work at regular times, the limited driving privilege must specify the general times and routes in which the applicant will be driving to and from work, and restrict driving to those times and routes.

(2) If the applicant is required to drive to and from work at a specific place, but is unable to specify the times at which that driving will occur, the limited driving privilege must specify the general routes in which the applicant will be driving to and from work, and restrict the driving to those general routes.

(3) If the applicant is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the applicant will be driving, and restrict driving to those times and within those boundaries.

(4) If the applicant can specify neither the times nor places in which he will be driving to and from work, or if he is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which he will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(g2) Driving for Other than Work-Related Purposes. — A limited driving privilege may not allow driving for maintenance of the household except during standard working hours, and the limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court. The limited driving privilege must authorize driving essential to the completion of any community work assignments, course of instruction at an Alcohol and Drug Education Traffic School, or substance abuse assessment or treatment, to which the applicant is ordered by the court as a condition of probation for the impaired driving conviction. If this driving will occur during nonstandard working hours, the limited driving privilege must specify the same limitations required by subsection (g1) for work-related driving during those hours, and it must include or have attached to it the name and address of the Alcohol and Drug

Education Traffic School, the community service coordinator, or mental health treatment facility to which the applicant is assigned. Driving for educational purposes other than the course of instruction at an Alcohol and Drug Education Traffic School is subject to the same limitations applicable to work related driving under subsections (g) and (g1).

(g3) Ignition Interlock Allowed. — A judge may include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

(g4) The restrictions set forth in subsection (g3) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege.

(h) Other Mandatory and Permissive Conditions or Restrictions. — In all limited driving privileges the judge must also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(i) Modification or Revocation of Privilege. — A judge who issues a limited driving privilege is authorized to modify or revoke the limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke a privilege in accordance with this subsection. The judge must indicate in the order of modification or revocation the reasons for the order, or he must make specific findings indicating the reason for the order and those findings must be entered in the record of the case.

(j) Effect of Violation of Restriction. — A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. — The clerk of court or the child support enforcement agency must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section, G.S. 20-16.2(e1), 20-16.1, 50-13.12, or 110-142.2, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege.

(*l*) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1983, c. 435, s. 31; 1983 (Reg. Sess., 1984), c. 1101, ss. 30-33; 1985, c. 706, s. 2; 1987, c. 869, s. 13; 1987 (Reg. Sess., 1988), c. 1037, s. 78; 1989, c. 436, s. 6; 1994, Ex. Sess., c. 20, s. 3; 1995, c. 506, ss. 1, 2; c. 538, s. 2(h).)

Editor's Note. — Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Effect of Amendments. — The 1994 Extra Session amendment, effective May 1, 1994, and applicable to offenses committed on or after that date, designated the introductory language under subsection (b) as subdivision (b)(1); redesignated former subdivisions (b)(1) through (b)(4) as subdivisions (b)(1)a. through (b)(1)d.; and added subdivision (b)(2).

Session Laws 1995, c. 506, ss. 1 and 2, effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date, added subsections (g3) and (g4) and subdivision (b)(1)e., and made related changes.

Session Laws 1995, c. 538, s. 2(h) effective January 1, 1996, and applicable to child support owed on or after that date, in subsection (k) inserted "or the child support enforcement agency" in the first sentence and substituted "G.S. 20-16.2(e1), 20-16.1, 50-13.12, or 110-142.2" for "G.S. 20-16.2(e1), or G.S. 20-16.1" in the second sentence.

§ 20-179.4. Community service alternative punishment; responsibilities of the Department of Crime Control and Public Safety; fee.

(a) The Department of Crime Control and Public Safety must conduct a community service alternative punishment program for persons sentenced under G.S. 20-179(i), (j) or (k).

(b) The Secretary of Crime Control and Public Safety must assign at least one coordinator to each district court district as defined in G.S. 7A-133 to assure and report to the court the person's compliance with the community service sentence. The appointment of each coordinator shall be made in consultation with and is subject to the approval of the chief district court judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, necessary equipment, and secretarial service for the use of each coordinator assigned to that county.

(c) A fee of one hundred dollars ($100.00) must be paid by all persons serving a community service sentence. That fee must be paid to the clerk of court in the county in which the person is convicted. The fee must be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so.

(d) Fees collected under this section must be deposited in the general fund.

(e) The coordinator must report to the court in which the community service was ordered a significant violation of the terms of the probation judgment related to community service. In such cases, the court must conduct a hearing to determine if there is a willful failure to comply. If the court determines there is a willful failure to pay the prescribed fee or to complete the work as ordered by the coordinator within the applicable time limits, the court must revoke any limited driving privilege issued in the impaired driving case, and in addition may take any further action authorized by Article 82 of General Statutes Chapter 15A for violation of a condition of probation. (1983, c. 761, s. 154; 1983 (Reg. Sess., 1984), c. 1101, ss. 34, 35; 1987 (Reg. Sess., 1988), c. 1037, s. 82; 1989, c. 752, s. 109; 1995, c. 496, s. 9.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to offenses occurring on or after that date, in subsection (c) deleted "him" preceding "additional time" in the third sentence, in the fourth sentence substituted "beginning" for "he begins", and "the person to" for "that he", and deleted the last sentence regarding the fee for supervision of community service punishment for persons ordered to attend an Alcohol and Drug Education Traffic School.

ARTICLE 3A.

Safety and Emissions Inspection Program.

Part 1. Safe Use of Streets and Highways.

§ 20-183.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 3, effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 2, effective October 1, 1994, substituted "Safety and Emissions Inspection Program" for "Motor Vehicle Law of 1947" as the heading for Article 3A.

Part 2. Safety and Emissions Inspections of Certain Vehicles.

§ 20-183.2. Description of vehicles subject to safety or emissions inspection; definitions.

(a) Safety. — A motor vehicle is subject to a safety inspection in accordance with this Part if it meets all of the following requirements:

(1) It is subject to registration with the Division under Article 3 of this Chapter.

(2) It is not subject to inspection under 49 C.F.R. Part 396, the federal Motor Carrier Safety Regulations.

(3) It is not a trailer whose gross weight is less than 4,000 pounds or a house trailer.

(b) Emissions. — A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

(1) It is subject to registration with the Division under Article 3 of this Chapter.

(2) It is not a trailer whose gross weight is less than 4,000 pounds, a house trailer, or a motorcycle.

(3) It is a 1975 or later model.

(4) It is powered or designed so that it could be powered by gasoline.

(5) It meets any of the following descriptions:

a. It is required to be registered in an emissions county.

b. It is part of a fleet that is operated primarily in an emissions county.

c. It is offered for rent in an emissions county.

d. It is offered for sale by a dealer in an emissions county and is not a new vehicle that has not been titled.

e. It is operated on a federal installation located in an emissions county and it is not a tactical military vehicle. Vehicles operated on a federal installation include those that are owned or leased by employees of the installation and are used to commute to the installation and those owned or operated by the federal agency that conducts business at the installation.

f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an emissions inspection.

(c) Definitions. — The following definitions apply in this Part:

(1) Emissions county. — A county in which the State either is required by federal law to conduct emissions testing or has agreed in its State Implementation Plan submitted to the federal Environmental Protection Agency to conduct emissions testing. The State Environmental Management Commission establishes the emissions counties pursuant to rules adopted under G.S. 143-215.107(a)(6).

(2) Federal installation. — An installation that is owned by, leased to, or otherwise regularly used as the place of business of a federal agency. (1965, c. 734, s. 1; 1967, c. 692, s. 1; 1969, c. 179, s. 2; cc. 219, 386; 1973, c. 679, s. 2; 1975, c. 683; c. 716, s. 5; 1979, c. 77; 1989, c. 467; 1991, c. 394, s. 1; c. 761, s. 7; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 163, s. 10.)

Cross References. — For note regarding Session Laws 1993 (Reg. Sess., 1994) c. 754, s. 12, payment of expenditures for the 1994-95 fiscal year for the Exhaust Emission Inspection Program, see § 20-183.7.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 9 provides for ensuring motorist compliance with the emissions inspection requirements of Part 2 of Article 3A of Chapter 20 of the General Statutes by a computer matching method from the effective date of that act [July 15, 1994] until October 1, 1996.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 10 provides that the Joint Legislative Transportation Oversight Committee shall review the method by which branch agents of the Division of Motor Vehicles of the Department of Transportation are reimbursed.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 11 provides that the Division of Motor Vehicles shall study the problem of the unlawful transfer of a vehicle inspection sticker from one vehicle to another.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s.

13 provides that the Division of Motor Vehicles shall report to the Joint Legislative Transportation Oversight Committee on the implementation of s. 1 of Session Laws 1993 (Reg. Sess., 1994), c. 754.

Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 14 provides for expenditure of funds to expand efforts that encourage compliance with fuel tax laws, and for consideration of alternatives to collection of the fuel tax on diesel fuel.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Safety and Emissions Inspections of Certain Vehicles" for "Equipment Inspection of Motor Vehicles" as the heading for Part 2; substituted "Description of vehicles subject to safety or emissions inspection; definitions" for "Equipment inspection required; inspection certificate; one-way permit to move vehicle to inspection station" as the catchline of this section; and rewrote the section.

The 1995 amendment, effective June 5, 1995, added "and is not a new vehicle that has not been titled" to the end of subdivision (b)(5)d.

§ 20-183.3. Scope of safety inspection and emissions inspection.

(a) Safety. — A safety inspection of a motor vehicle consists of an inspection of the following equipment to determine if the vehicle has the equipment required by Part 9 of Article 3 of this Chapter and if the equipment is in a safe operating condition:

(1) Brakes, as required by G.S. 20-124.

(2) Lights, as required by G.S. 20-129 or G.S. 20-129.1.

(3) Horn, as required by G.S. 20-125(a).

(4) Steering mechanism, as required by G.S. 20-123.1.

(5) Windows and windshield wipers, as required by G.S. 20-127. To determine if a vehicle window meets the window tinting restrictions, a safety inspection mechanic must first determine, based on use of an automotive film check card or knowledge of window tinting techniques, if after-factory tint has been applied to the window. If after-factory tint has been applied, the mechanic must use a light meter approved by the Commissioner to determine if the window meets the window tinting restrictions.

(6) Directional signals, as required by G.S. 20-125.1.

(7) Tires, as required by G.S. 20-122.1.

(8) Mirrors, as required by G.S. 20-126.

(9) Exhaust system, as required by G.S. 20-128. For a vehicle that is subject to an emissions inspection in addition to a safety inspection, a visual inspection of the vehicle's emission-control devices is included in the emissions inspection rather than the safety inspection.

(b) Emissions. — An emissions inspection of a motor vehicle consists of a visual inspection of the vehicle's emission control devices to determine if the devices are present, are properly connected, and are the correct type for the vehicle and an analysis of the exhaust emissions of the vehicle to determine if the exhaust emissions meet the standards for the model year of the vehicle set by the Environmental Management Commission. To pass an emissions inspection a vehicle must pass both the visual inspection and the exhaust emissions analysis. When an emissions inspection is performed on a vehicle, a safety inspection must be performed on the vehicle as well.

(c) Reinspection After Failure. — The scope of a reinspection of a vehicle that has been repaired after failing an inspection is the same as the original inspection unless the vehicle is presented for reinspection within 30 days of failing the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was a safety inspection, the reinspection is limited to an inspection of the equipment that failed the original inspection. If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was an emissions inspection, the reinspection is limited to the portion of the inspection the vehicle failed and any other portion of the inspection that would be affected by repairs made to correct the failure. (1965, c. 734, s. 1; 1969, c. 378, s. 2; 1971, c. 455, s. 2; c. 478, ss. 1, 2; 1979, 2nd Sess., c. 1180, s. 3; 1981 (Reg. Sess., 1982), c. 1261, s. 1; 1989, c. 391, s. 2; 1991, c. 654, s. 2; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 473, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Scope of safety inspection and emissions inspection" for "Inspection requirements" as the section catchline, rewrote subsections (a) and (b), and added subsection (c).

The 1995 amendment, effective November 1, 1995, added the second and third sentences of subdivision (a)(5).

§ 20-183.4. License required to perform safety inspection; qualifications for license.

(a) License Required. — A safety inspection must be performed by one of the following methods:

(1) At a station that has a safety inspection station license issued by the Division and by a mechanic who is employed by the station and has a safety inspection mechanic license issued by the Division.

(2) At a place of business of a person who has a safety self-inspector license issued by the Division and by an individual who has a safety inspection mechanic license issued by the Division.

(b) Station Qualifications. — An applicant for a license as a safety inspection station must meet all of the following requirements:

(1) Have a place of business that has adequate facilities, space, and equipment to conduct a safety inspection.

(2) Regularly employ at least one mechanic who has a safety inspection mechanic license.

(c) Mechanic Qualifications. — An applicant for a license as a safety inspection mechanic must meet all of the following requirements:

(1) Have successfully completed an eight-hour course approved by the Division that teaches students about the safety equipment a motor vehicle is required to have to pass a safety inspection and how to conduct a safety inspection.

(2) Have a drivers license.

(3) Be of good character and have a reputation for honesty.

(d) Self-Inspector Qualifications. — An applicant for a license as a safety self-inspector must meet all of the following requirements:

(1) Operate a fleet of at least 10 vehicles that are subject to a safety inspection.

(2) Regularly employ or contract with an individual who has a safety inspection mechanic license and who will perform a

safety inspection on the vehicles that are part of the self-inspector's fleet. (1965, c. 734, s. 1; 1967, c. 692, s. 2; 1975, c. 716, s. 5; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "License required to perform safety inspection; qualifications for license" for "Licensing of safety equipment inspection stations" as the section catchline, and rewrote the section.

§ 20-183.4A. License required to perform emissions inspection; qualifications for license.

(a) License Required. — An emissions inspection must be performed by one of the following methods:

(1) At a station that has an emissions inspection station license issued by the Division and by a mechanic who is employed by the station and has an emissions inspection mechanic license issued by the Division.

(2) At a place of business of a person who has an emissions self-inspector license issued by the Division and by an individual who has an emissions inspection mechanic license.

(b) Station Qualifications. — An applicant for a license as an emissions inspection station must meet all of the following requirements:

(1) Have a license as a safety inspection station.

(2) Have an emissions analyzer approved by the Environmental Management Commission.

(3) Have equipment to transfer information on emissions inspections to the Division by electronic means.

(4) Regularly employ at least one mechanic who has an emissions inspection mechanic license.

(c) Mechanic Qualifications. — An applicant for a license as an emissions inspection mechanic must meet all of the following requirements:

(1) Have a license as a safety inspection mechanic.

(2) Have successfully completed an eight-hour course approved by the Division that teaches students about the causes and effects of the air pollution problem, the purpose of the emissions inspection program, the vehicle emission standards established by the federal Environmental Protection Agency, the emission control devices on vehicles, how to conduct an emissions inspection using an emissions analyzer approved by the Environmental Management Commission, and any other topic required by 40 C.F.R. § 51.367 to be included in the course. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle.

(d) Self-Inspector Qualifications. — An applicant for a license as an emissions self-inspector must meet all of the following requirements:

(1) Have a license as a safety self-inspector.

(2) Operate a fleet of at least 10 vehicles that are subject to an emissions inspection.

(3) Have, or have a contract with a person who has, an emissions analyzer approved by the Environmental Management Commission.

(4) Regularly employ or contract with an individual who has an emissions inspection mechanic license and who will perform an emissions inspection on the vehicles that are part of the self-inspector's fleet. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.4B. Application for license; duration of license; renewal of mechanic license.

(a) Application. — An applicant for a license issued under this Part must complete an application form provided by the Division. The application must contain the applicant's name and address and any other information needed by the Division to determine whether the applicant is qualified for the license. The Division must review an application for a license to determine if the applicant qualifies for the license. If the applicant meets the qualifications, the Division must issue the license. If the applicant does not meet the qualifications, the Division must deny the application and notify the applicant in writing of the reason for the denial.

(b) Duration of License. — A safety inspection mechanic license expires four years after the date it is issued. An emissions mechanic inspection license expires two years after the date it is issued. A safety inspection station license, an emissions inspection station license, and a self-inspector license are effective until surrendered by the license holder or suspended or revoked by the Division.

(c) Renewal of Mechanic License. — A safety or an emissions inspection mechanic may apply to renew a license by filing an application with the Division on a form provided by the Division. To renew an emissions inspection mechanic license, an applicant must have successfully completed a four-hour emissions refresher course approved by the Division within nine months of applying for renewal. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.4C. When a vehicle must be inspected.

A vehicle that is subject to a safety inspection, an emissions inspection, or both must be inspected as follows:

(1) A new vehicle must be inspected before it is offered for sale at retail in this State.

(2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer at a location other than a public auction.

(3) A used vehicle that is offered for sale at retail in this State by a dealer at a public auction must be inspected before it is offered for sale unless it has an inspection sticker that was put on the vehicle under this Part and does not expire until at least nine months after the date the vehicle is offered for sale at auction.

(4) A used vehicle acquired by a resident of this State from a person outside the State must be inspected within 10 days after the vehicle is registered with the Division.

(5) A vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected within 10 days after the vehicle is registered with the Division.

(6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the inspection sticker on the vehicle expires, unless another subdivision of this section requires it to be inspected sooner. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.4D. Procedure when a vehicle is inspected.

(a) Receipt. — When a safety inspection mechanic or an emissions inspection mechanic inspects a vehicle, the mechanic must give the person who brought the vehicle in for inspection an inspection receipt. The inspection receipt must state the date of the inspection, identify the mechanic performing the inspection, identify the station or self-inspector where the inspection was performed, and list the components of the inspection performed and indicate for each component whether the vehicle passed or failed. A vehicle that fails a component of an inspection may be repaired at any repair facility chosen by the owner or operator of the vehicle.

(b) Sticker. — When a vehicle that is subject to a safety inspection only passes the safety inspection, the safety inspection mechanic who performed the inspection must put an inspection sticker on the windshield of the vehicle at the place designated by the Division. When a vehicle that is subject to both a safety inspection and an emissions inspection passes both inspections or passes the safety inspection and has a waiver for the emissions inspection, the emissions mechanic performing the inspection must put an inspection sticker on the windshield of the vehicle at the place designated by the Division.

(c) Content of Sticker. — An inspection sticker issued for a vehicle that is subject to a safety inspection only must be a different color from an inspection sticker issued for a vehicle that is subject to both a safety and an emissions inspection. An inspection sticker must indicate when it expires, must be printed with a unique serial number and an official program seal, and must be counterfeit resistant. The side of an inspection sticker that is readable from the interior of a vehicle must contain the following information:

(1) The date the inspection was performed.

(2) The odometer reading when the inspection was performed.

(3) The signature, initials, or other identification of the mechanic who performed the inspection and put the sticker on the windshield.

(d) When Sticker Expires. — An inspection sticker put on a vehicle that did not have an inspection sticker issued under this Part when it was brought in for inspection expires at midnight on the last day of the twelfth month after the month the inspection sticker is put on the vehicle. An inspection sticker put on a vehicle that had an inspection sticker that was put on under this Part when it was brought in for inspection expires as follows:

(1) If the expiration date of the inspection sticker the vehicle had when it was brought in for inspection is less than 12 full months from the date of the inspection, the inspection sticker expires at midnight on the last day of the twelfth month after the month the inspection sticker is put on the vehicle.

(2) If the expiration date of the inspection sticker the vehicle had when it was brought in for inspection is 12 or more months from the date of the inspection, the inspection sticker expires one year after the expiration date of the inspection sticker the vehicle had when it was brought in for inspection, regardless of whether there are 12 months in this period. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.5. When a vehicle that fails an emissions inspection may obtain a waiver from the inspection requirement.

(a) Requirements. — The Division may issue a waiver for a vehicle that meets all of the following requirements:

(1) Fails an emissions inspection because it passes the visual inspection part of the inspection but fails the exhaust emissions analysis part of the inspection.

(2) Has documented repairs costing at least the waiver amount made to the vehicle to correct the cause of the failure. The waiver amount is seventy-five dollars ($75.00) if the vehicle is a pre-1981 model and is two hundred dollars ($200.00) if the vehicle is a 1981 or newer model.

(3) Is reinspected and again fails the inspection because it passes the visual inspection part of the inspection but fails the exhaust emissions analysis part of the inspection.

(4) Meets any other waiver criteria required by 40 C.F.R. § 51.360.

(b) Procedure. — To obtain a waiver, a person must contact a local enforcement office of the Division. Before issuing a waiver, an employee of the Division must review the inspection receipts issued for the inspections of the vehicle, review the documents establishing what repairs were made to the vehicle and at what cost, review any statement denying warranty coverage of the repairs made, and do a visual inspection of the vehicle, if appropriate, to determine if the documented repairs were made. The Division must issue a waiver if it determines that the vehicle qualifies for a waiver. A person to whom a waiver is issued must present the waiver to the self-inspector or inspection station performing the inspection to obtain an inspection sticker.

(c) Repairs. — The following repairs and their costs cannot be considered in determining whether the cost of repairs made to a vehicle equals or exceeds the waiver amount:

(1) Repairs covered by a warranty that applies to the vehicle.

(2) Repairs needed as a result of tampering with an emission control device of the vehicle.

(3) If the vehicle is a 1981 or newer model, repairs made by an individual who is not engaged in the business of repairing vehicles.

(d) Sticker Expiration. — An inspection sticker put on a vehicle after the vehicle receives a waiver from the requirement of passing the emissions inspection expires at the same time it would if the vehicle had passed the emissions inspection. (1965, c. 734, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "When a vehicle that fails an emissions inspection may obtain a waiver from the inspection requirement" for "Supervision of safety equipment inspection stations" as the section catchline, and rewrote the section.

§ 20-183.6. Businesses that replace windshields must register with Division to get inspection stickers.

A person who is engaged in the business of replacing windshields on vehicles that are subject to inspection under this Part may register with the Division to obtain replacement inspection stickers for use on replaced windshields. A replacement inspection sticker put on a windshield that has been replaced must contain the same information and expire at the same time as the inspection sticker it replaces. A person who puts a replacement inspection sticker on a replaced windshield must remove the inspection sticker from the windshield that was replaced and keep the removed inspection sticker until 30 days after it expires.

A person registered under this section must keep records of replacement stickers put on replaced windshields and must be able to account for all inspection stickers received from the Division. The Division may suspend or revoke the registration of a person under this section if the person fails to keep records required by the Division or is unable to account for inspection stickers received from the Division. An auditor of the Division may review the records of a person registered under this section during normal business hours. (1965, c. 734, s. 1; 1975, c. 109; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Businesses that replace windshields must register with Division to get inspection stickers" for "Commissioner of Motor Vehicles to establish procedures; unlawful possession, etc., of certificates" as the section catchline, and rewrote the section.

§ 20-183.6A. Administration of program; duties of license holders.

(a) Division. — The Division is responsible for administering the safety inspection and the emissions inspection programs. In exercising this responsibility, the Division must:

(1) Conduct performance audits, record audits, and equipment audits of those licensed to perform inspections to ensure that inspections are performed properly.

(2) Ensure that Division personnel who audit license holders are knowledgeable about audit procedures and about the requirements of both the safety inspection and the emissions inspection programs.

(3) Perform an emissions inspection on a vehicle when requested to do so by a vehicle owner so the owner can compare the result of the inspection performed by the Division with the result of an inspection performed at an emissions inspection station.

(4) Investigate complaints about a person licensed to perform inspections and reports of irregularities in performing inspections.

(5) Establish written procedures for the issuance of inspection stickers to persons licensed to perform inspections.

(6) Submit information and reports to the federal Environmental Protection Agency as required by 40 C.F.R. Part 51.

(b) License Holders. — A person who is licensed by the Division under this Part must post the license at the place required by the Division and must keep a record of inspections performed. The inspection record must identify the vehicle that was inspected, indicate the type of inspection performed and the date of inspection, and contain any other information required by the Division. A self-inspector or an inspection station must send its records of inspections to the Division in the form and at the time required by the Division. An auditor of the Division may review the inspection records of a person licensed by the Division under this Part during normal business hours. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.7. Fees for performing an inspection and putting an inspection sticker on a vehicle; use of civil penalties.

(a) Fee Amount. — The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
Safety Only, Without After-Factory Tinted Window	$ 8.25	$ 1.00
Safety Only, With After-Factory Tinted Window	18.25	1.00

Type	Inspection	Sticker
Emissions and Safety Without After-Factory Tinted Window	17.00	2.40
Emissions and Safety With After-Factory Tinted Window	27.00	2.40.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for performing an inspection of a vehicle with a tinted window applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint.

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee.

(b) Self-Inspector. — The fee for an inspection does not apply to an inspection performed by a self-inspector. The fee for putting an inspection sticker on a vehicle applies to an inspection performed by a self-inspector.

(c) Fee Distribution. — Fees collected for inspection stickers are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the Emissions Program Account established in subsection (d) of this section, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of Environmental Management of the Department of Environment, Health, and Natural Resources:

Recipient	Safety Only Sticker	Emissions and Safety Sticker
Highway Fund	.75	.00
Emissions Program Account	.00	1.80
Volunteer Rescue/EMS Fund	.15	.15
Rescue Squad Workers' Relief Fund	.10	.10
Division of Environmental Management	.00	.35.

(d) Account. — The Emissions Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle emissions inspection and maintenance program.

(e) Civil Penalties. — Civil penalties collected under this Part shall be credited to the Highway Fund as nontax revenue. (1965, c. 734, s. 1; 1969, c. 1242; 1973, c. 1480; 1975, c. 547; c. 716, s. 5; c. 875, s. 4; 1979, c. 688; 1979, 2nd Sess., c. 1180, ss. 5, 6; 1981, c. 690, s. 17; 1981 (Reg. Sess., 1982), c. 1261, s. 2; 1985, c. 415, ss. 1-6; 1985 (Reg. Sess., 1986), c. 1018, s. 8; 1987, c. 584, ss. 1-3; 1987 (Reg. Sess., 1988), c. 1062, ss. 3-5; 1989, c. 391, s. 3; c. 534, s. 3; 1989 (Reg. Sess., 1990), c. 1066, s. 33(b); 1991 (Reg. Sess., 1992), c. 943, s. 1; 1993, c. 385, s. 1; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 473, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, which amended this section, in s. 12 provides for the payment of expenditures for the

1994-95 fiscal year for the Exhaust Emission Inspection Program.

The 1993 (Reg Sess., 1994) amendment, effective October 1, 1994, substituted "Fees for performing an inspection and putting an inspection sticker on a vehicle; use of civil penalties" for "Charges for inspections and certificates; safety equipment inspection station records" as the section catchline, and rewrote the section.

Effect of Amendments. — The 1995 amendment, effective November 1, 1995, in subsection (a) rewrote the table of fees, and added the last sentence in the second paragraph.

§ 20-183.8. Infractions and criminal offenses for violations of inspection requirements.

(a) Infractions. — A person who does any of the following commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars ($50.00):

(1) Operates a motor vehicle that is subject to inspection under this Part on a highway or public vehicular area in the State when the vehicle has not been inspected in accordance with this Part, as evidenced by the vehicle's lack of a current inspection sticker or otherwise.

(2) Allows an inspection sticker to be put on a vehicle owned or operated by that person, knowing that the vehicle was not inspected before the sticker was attached or was not inspected properly.

(3) Attaches an inspection sticker to a vehicle, knowing or having reasonable grounds to know an inspection of the vehicle was not performed or was performed improperly.

(b) Defenses to Infractions. — Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) The vehicle was in a state of disrepair on the date the inspection sticker expired, the owner has since repaired the vehicle, the vehicle is being driven from the owner's residence or other place where the owner repaired the vehicle to an inspection station, and the owner has not otherwise driven the vehicle since the inspection sticker expired.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety-only inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued.

(c) Felony. — A person who forges an inspection sticker commits a Class I felony. (1965, c. 734, s. 1; 1967, c. 692, s. 3; 1969, c. 179, s. 1; c. 620; 1973, cc. 909, 1322; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 4; 1985, c. 764, s. 23; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Infractions and criminal offenses for violations of inspection requirements" for "Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation; fictitious or unlawful inspection certificate; 30-day grace period for expired inspection certificates" as the section catchline, and rewrote the section.

§ 20-183.8A. (Effective until October 1, 1996) Civil penalties against motorists for emissions violations.

The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

(1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part.
(2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.
(3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle.

The amount of the penalty is one hundred dollars ($100.00) if the vehicle is a pre-1981 vehicle and is two hundred twenty-five dollars ($225.00) if the vehicle is a 1981 or newer model vehicle. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Section Set Out Twice. — The section above is effective until October 1, 1996. For the section as amended effective October 1, 1996, see the following section, also numbered § 20-183.8A.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.8A. (Effective October 1, 1996) Civil penalties against motorists for emissions violations.

The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

(1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part.
(2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.
(3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle.

The amount of penalty is one hundred dollars ($100.00) if the vehicle is a pre-1981 vehicle and two hundred fifty dollars ($250.00) if the vehicle is a 1981 or newer model vehicle. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this subsection has been paid. (1993 (Reg. Sess., 1994), c. 754, ss. 1, 8.)

Section Set Out Twice. — The section above is effective October 1, 1996. For the section as in effect until October 1, 1996, see the preceding section, also numbered § 20-183.8A.

Effect of Amendments. — The 1993

(Reg. Sess., 1994) amendment, effective October 1, 1996, in the second paragraph added the second sentence.

§ 20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.

(a) Kinds of Violations. — The civil penalty schedule established in this section applies to emissions self-inspectors, emissions inspection stations, and emissions inspection mechanics. The schedule categorizes emissions violations into serious (Type I), minor (Type II), and technical (Type III) violations.

A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the emission reduction benefits of the emissions inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting an emissions inspection or complying with the emissions inspection requirements but does not directly affect the emission reduction benefits of the emissions inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.

(b) Penalty Schedule. — The Division must take the following action for a violation:

(1) Type I. — For a first or second Type I violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for six months. For a third or subsequent Type I violation within seven years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one thousand dollars ($1,000) and revoke the license of the business for two years.

For a first or second Type I violation by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by an emissions inspection mechanic, assess a civil penalty of two hundred fifty dollars ($250.00) and revoke the mechanic's license for two years.

(2) Type II. — For a first or second Type II violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one hundred dollars ($100.00). For a third or subsequent Type II violation within seven years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for 90 days.

For a first or second Type II violation by an emissions inspection mechanic, assess a civil penalty of fifty dollars ($50.00). For a third or subsequent Type II violation within seven years by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for 90 days.

(3) Type III. — For a first or second Type III violation by an emissions self-inspector, an emissions inspection station, or

an emissions inspection mechanic, send a warning letter. For a third or subsequent Type III violation within seven years by the same emissions license holder, assess a civil penalty of twenty-five dollars ($25.00).

(c) Station or Self-Inspector Responsibility. — It is the responsibility of an emissions inspection station and an emissions self-inspector to supervise the emissions mechanics it employs. A Type I violation by an emissions inspector mechanic is considered a Type I violation by the station or self-inspector for whom the mechanic is employed. A Type II or III violation by an emissions mechanic is not automatically a Type II or III violation by the station or self-inspector for whom the mechanic is employed. The Division may determine which Type II or Type III violations by an emissions mechanic are also violations by the station or self-inspector.

(d) Missing Stickers. — The Division must assess a civil penalty against an emissions inspection station or an emissions self-inspector that cannot account for an emissions inspection sticker issued to it. A station or a self-inspector cannot account for a sticker when the sticker is missing and the station or self-inspector cannot establish reasonable grounds for believing the sticker was stolen or destroyed by fire or another accident.

The amount of the penalty is twenty-five dollars ($25.00) for each missing sticker. If a penalty is imposed under subsection (b) of this section as the result of missing stickers, the monetary penalty that applies is the higher of the penalties required under this subsection and subsection (b); the Division may not assess a monetary penalty as a result of missing stickers under both this subsection and subsection (b). Imposition of a monetary penalty under this subsection does not affect suspension or revocation of a license required under subsection (b). (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.8C. Acts that are Type I, II, or III emissions violations.

(a) Type I. — It is a Type I violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Put an emissions inspection sticker on a vehicle without performing an emissions inspection of the vehicle or after performing an emissions inspection in which the vehicle did not pass the inspection.

(2) Use a test-defeating strategy when conducting an emissions inspection, such as holding the accelerator pedal down slightly during an idle test, disconnecting or crimping a vacuum hose to effect a passing result, or changing the emission standards for a vehicle by incorrectly entering the vehicle type or model year to achieve a passing result.

(3) Allow a person who is not licensed as an emissions inspection mechanic to perform an emissions inspection for a self-inspector or at an emissions station.

(4) Sell or otherwise give an inspection sticker to another other than as the result of a vehicle inspection in which the

vehicle passed the inspection or for which the vehicle received a waiver.

(5) Be unable to account for five or more inspection stickers at any one time upon the request of an auditor of the Division.

(6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.

(7) Transfer an inspection sticker from one vehicle to another.

(b) Type II. — It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Use the identification code of another to gain access to an emissions analyzer.

(2) Keep inspection stickers and other compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.

(c) Type III. — It is a Type III violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Fail to post an emissions license issued by the Division.

(2) Fail to send information on emissions inspections to the Division at the time or in the form required by the Division.

(d) Other Acts. — The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation. (1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 163, s. 11.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

Effect of Amendments. — The 1995 amendment, effective June 5, 1995, inserted "do" following "inspection mechanic to" in the introductory language of subsection (c).

§ 20-183.8D. Suspension or revocation of license for safety violations.

The Division may suspend or revoke a safety self-inspector license, a safety inspection station license, and a safety inspection mechanic license issued under this Part if the license holder fails to comply with this Part or a rule adopted by the Commissioner to implement this Part. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

§ 20-183.8E. Administrative and judicial review.

A person whose application for a license or registration is denied, whose license or registration is suspended or revoked, who is assessed a civil penalty, or who receives a warning letter under this Part may obtain an administrative review of the action by the Commissioner by filing with the Division a written request for a hearing before the Commissioner. A request for a hearing must be filed within 10 days after the person receives written notice of the action for which a hearing is requested.

If the action that is the subject of a request for a hearing is the suspension or revocation of an emissions self-inspector license, an emissions inspection station license, or an emissions inspection mechanic license, the Commissioner must hold the hearing within 14 days after the Division receives the request. If the action that is the subject of a request for a hearing is not one of these actions, the Commissioner must hold a hearing within 90 days after the Division receives the request.

After a hearing on the imposition of a monetary penalty against a motorist for an emissions violation or on a Type I, II, or III emissions violation by an emissions license holder, the Commissioner must uphold any monetary penalty, license suspension, license revocation, or warning required by G.S. 20-183.8A or G.S. 20-183.8B, respectively, if the Commissioner finds that the motorist or license holder committed the act for which the monetary penalty, license suspension, license revocation, or warning was imposed. After a hearing on any other action, the Commissioner may uphold or modify the action.

Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision by the Commissioner under this section. (1993 (Reg. Sess., 1994), c. 754, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

ARTICLE 3B.

Permanent Weighing Stations and Portable Scales.

§ 20-183.11: Repealed by Session Laws 1995, c. 109, s. 5, effective October 1, 1995.

§ 20-183.12: Repealed by Session Laws 1995, c. 163, s. 12, effective June 5, 1995.

ARTICLE 4.

State Highway Patrol.

§ 20-187.3. Quotas prohibited.

Editor's Note. — Session Laws 1995, c. 358, s. 2, as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that no person may receive a salary increase under this section prior to July 28, 1995.

§ 20-193: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 18, effective July 16, 1994.

ARTICLE 6.

Giving Publicity to Highway Traffic Laws through the Public Schools.

§§ 20-212 through 20-215: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 19, effective July 16, 1994.

ARTICLE 6A.

Motor Carriers of Migratory Farm Workers.

§ 20-215.4. Violation of regulations a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 7.

Miscellaneous Provisions Relating to Motor Vehicles.

§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.

Editor's Note. — Session Laws 1983, c. 779, s. 3 formerly provided that the act should become effective October 1, 1983 and expire October 1, 1985 and that this section should not be effective on and after said date. However, as amended by Session Laws 1985, c. 700, s. 1, Session Laws 1983, c. 779, s. 3 now reads: "This act shall become effective October 1, 1983. G.S. 20-217(f) shall expire October 1, 1987 and shall not be effective on and after that date."

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.

(a) Qualifications. — No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by children unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. — It is unlawful to drive a school bus loaded with children over the highways or public vehicular areas of the State at a greater rate of speed than 45 miles per hour. It is unlawful to drive a school activity bus loaded with children over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. — A person who violates this section commits a Class 3 misdemeanor. (1937, c. 397, ss. 1-3; 1941, c. 21; 1943, c. 440; 1945, c. 216; 1957, cc. 139, 595; 1971, c. 293; 1977, c. 791, ss. 1, 2; c. 1102; 1979, c. 31, ss. 1, 2; c. 667, s. 36; 1981, c. 30; 1987, c. 337, s. 1; 1989, c. 558, s. 1; c. 771, s. 6; 1991, c. 726, s. 22; 1993, c. 217, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 20.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, added "for school buses and school activity buses" at the end of the section catchline, inserted the subsection catchlines, and rewrote subsections (b) and (c).

§ 20-218.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 21, effective July 16, 1994.

§ 20-218.2. Speed limit for nonprofit activity buses.

It is unlawful to drive an activity bus that is owned by a nonprofit organization and is transporting persons in connection with nonprofit activities over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour. A person who violates this section commits a Class 3 misdemeanor. (1969, c. 1000, s. 2; 1987, c. 337, s. 2; 1993 (Reg. Sess., 1994), c. 761, s. 23.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, substituted "nonprofit activity buses" for "activity buses for nonprofit purpose" in the section catchline, and rewrote the section.

§ 20-219: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 24, effective July 16, 1994.

§ 20-219.2. Removal of unauthorized vehicles from private lots.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 8A.

Issuance of New Licenses to Persons Adjudged Habitual Offenders.

§ 20-231.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 25, effective July 16, 1994.

ARTICLE 9A.

Motor Vehicle Safety and Financial Responsibility Act of 1953.

§ 20-279.1. Definitions.

Legal Periodicals. — For note, "Underinsured Motorist Coverage: North Carolina's Multiple Claimant Wrinkle — Ray v. Atlantic Casualty Insurance Co.," see 17 Campbell L. Rev. 147 (1995).

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Contravening Policy Provision Is Void. — The provisions of the act are written into every automobile liability policy as a matter of law, and when a provision of the policy conflicts with a provision of the statute favorable to the insured, the provision of the statute controls. State Farm Mut. Auto. Ins. Co. v. Young, 115 N.C. App. 68, 443 S.E.2d 756, cert. granted, 338 N.C. 523, 453 S.E.2d 168 (1994).

Policy provisions which excluded "owned vehicles" from underinsured motorist (UIM) coverage were invalid because they conflicted with the statutory provisions for UIM coverage contained within the Motor Vehicle Safety and Financial Responsibility Act. State Farm Mut. Auto. Ins. Co. v. Young, 115 N.C. App. 68, 443 S.E.2d 756, cert. granted, 338 N.C. 523, 453 S.E.2d 168 (1994).

§ 20-279.4: Repealed by Session Laws 1995, c. 191, s. 4, effective January 1, 1996.

§ 20-279.5. Security required unless evidence of insurance; when security determined; suspension; exceptions.

(a) When the Division receives a report of a reportable accident under G.S. 20-166.1, the Commissioner must determine whether the owner or driver of a vehicle involved in the accident must file security under this Article and, if so, the amount of security the owner or driver must file. The Commissioner must make this determination at the end of 20 days after receiving the report.

(b) The Commissioner shall, within 60 days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and each owner of a motor vehicle in any manner involved in such accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, unless such operator or owner, or both, shall deposit security in the sum so determined by the Commissioner; provided, notice of such suspension shall be sent by the Commissioner to such operator and owner not less than 10 days prior to the effective date of such suspension and shall state the amount required as security; provided further, the provisions of this Article requiring the deposit of security and the suspension of license for failure to deposit security shall not apply to an operator or owner who would otherwise be required to deposit security in an amount not in excess of one hundred dollars ($100.00). Where erroneous information is given the Commissioner with respect to the matters set forth in subdivisions (1), (2) or (3) of subsection (c) of this section or with respect to the ownership or operation of the vehicle, the extent of damage and injuries, or any other matters which would have affected the Commissioner's action had the information been previously submitted, he shall take appropriate action as hereinbefore provided, within 60 days after receipt by him of correct information with respect to said matters. The Commissioner, upon request and in his discretion, may postpone the effective date of the suspension provided in this section by 15 days if, in his opinion, such extension would aid in accomplishing settlements of claims by persons involved in accidents.

(c) This section shall not apply under the conditions stated in G.S. 20-279.6 nor:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Commissioner, covered by any other form

of liability insurance policy or bond or sinking fund or group assumption of liability;

(4) To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor

(5) To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946, which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one accident. (1953, c. 1300, s. 5; 1955, cc. 138, 854; c. 855, s. 1; c. 1152, ss. 4-8; c. 1355; 1967, c. 277, s. 2; 1971, c. 763, s. 3; 1973, c. 745, s. 2; 1979, c. 832, s. 2; 1983, c. 691, s. 2; 1991, c. 469, s. 2; 1995, c. 191, s. 5.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, rewrote subsection (a).

Legal Periodicals. — For note, "Underinsured Motorist Coverage: North Carolina's Multiple Claimant Wrinkle — Ray v. Atlantic Casualty Insurance Co.," see 17 Campbell L. Rev. 147 (1995).

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Stated in Maryland Cas. Co. v. Smith, 117 N.C. App. 593, 452 S.E.2d 318 (1995).

Cited in Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994); State Farm Mut. Auto. Ins. Co. v. Young, 115 N.C. App. 68, 443 S.E.2d 756, cert. granted, 338 N.C. 523, 453 S.E.2d 168 (1994).

§ 20-279.7A. Forms to carry statement concerning perjury.

A person who makes a false affidavit or falsely sworn or affirmed statement concerning information required to be submitted under this Article commits a Class I felony. The Division shall include a statement of this offense on a form that it provides under this Article and that must be completed under oath. (1983, c. 610, s. 3; 1993 (Reg. Sess., 1994), c. 761, s. 26.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) c. 761, which amended this section, in s. 35 provides in part that prosecutions for, or sentences based on, offenses occurring before the effective date of Chapter 539 of the 1993 Session Laws [October 1, 1994] are not abated or affected by ss. 2 through 4, 17, 20, 23, and 26 of c. 761.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective the same date that Chapter 539 of the 1993 Session Laws becomes effective [October 1, 1994], and applicable to offenses committed on or after the effective date of Chapter 539, rewrote this section.

§ 20-279.11. Matters not to be evidence in civil suits.

Neither the information on financial responsibility contained in an accident report, the action taken by the Commissioner pursuant to this Article, the findings, if any, of the Commissioner upon which the action is based, or the security filed as provided in this Article shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. (1953, c. 1300, s. 11; 1995, c. 191, s. 6.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, substituted "information on financial responsibility contained in an accident report" for "report required by G.S. 20-279.4" following "Neither the" and substituted "the" for "such" preceding "action is based".

§ 20-279.21. "Motor vehicle liability policy" defined.

Legal Periodicals. —

For note, "Baxley v. Nationwide Mutual Insurance Company: A Key Loophole in the Financial Responsibility Act of 1953 Comes to Light," see 72 N.C.L. Rev. 1809 (1994).

For note, "Underinsured Motorist Coverage: North Carolina's Multiple Claimant Wrinkle — Ray v. Atlantic Casualty Insurance Co.," see 17 Campbell L. Rev. 147 (1995).

CASE NOTES

I. General Consideration.
II. The Omnibus Clause.
III. Uninsured Motorist Coverage.
IV. Underinsured Motorist Coverage.

I. GENERAL CONSIDERATION.

The manifest purpose of this article, etc. —

The purpose of the Financial Responsibility Act has always been to protect innocent motorists from financially irresponsible motorists. Nationwide Mut. Ins. Co. v. Baer, 113 N.C. App. 517, 439 S.E.2d 202 (1994).

The purpose of uninsured motorist (UM) and underinsured motorist (UIM) coverage is to compensate the innocent victims of financially irresponsible motorists. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79, cert. granted, — N.C. —, 449 S.E.2d 565 (1994).

The provisions of this section are written into every policy, etc. —

When a statute is applicable to the terms of an insurance policy, the provisions of the statute become the terms of the policy, as if written into it. If the terms of the statute and the policy conflict, the statute prevails. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79, cert. granted, — N.C. —, 449 S.E.2d 565 (1994).

When a statute applies to the terms of an insurance policy, the provisions of the statute become terms of the policy to the same extent as if they were written in the policy, and if the terms of the policy conflict with the statute, the provisions of the statute control. Baxley v. Nationwide Mut. Ins. Co., 115 N.C. App. 718, 446 S.E.2d 597 (1994).

Exclusionary Provisions Contravening Article Are Void. —

The public policy goals of the Financial Responsibility Act apply only when the Act itself is being construed or when determinations are being made regarding the extent to which the Act, as to its mandatory minimum coverages, may override conflicting insurance policy provisions. Newell v. Nationwide Mut. Ins. Co., 334 N.C. 391, 432 S.E.2d 284 (1993).

Family Member Exclusion. — Insurance policy's "family member" exclusion for UM coverage is repugnant to the purpose of UM and UIM coverage and is therefore invalid. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79, cert. granted, — N.C. —, 449 S.E.2d 565 (1994).

Family member exclusion was valid as to the coverage beyond the 1989 statutory minimum of $25,000. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79, cert. granted, — N.C. —, 449 S.E.2d 565 (1994).

Owned Vehicle Exclusion Void. — Trial court did not err in allowing coverage under policy, as the "owned vehicle" exclusion in it was void against public policy. Hussey v. State Farm Mut. Auto. Ins. Co., 115 N.C. App. 464, 445 S.E.2d 63, cert. granted, 338 N.C. 310, 450 S.E.2d 487 (1994).

"Family Owned" vs. "Household Owned". — Although a "family-owned vehicle" or "household-owned vehicle" exclusion may be clear and unambiguous, it will not be upheld by our courts in the context of uninsured motorist/underinsured motorist coverage. Nationwide Mut. Ins. Co. v. Lankford, 118 N.C. App. 368, 455 S.E.2d 484 (1995).

Classes of Insureds. — There is nothing in this section which indicates that if a person is otherwise covered as a first class insured he loses this coverage if he is covered as a second class insured on another policy. Mitchell v. Nationwide Mut. Ins. Co., 335 N.C. 433, 439 S.E.2d 110 (1994).

Interpolicy and Intrapolicy Stacking. — A person living in the household with relatives should be allowed to aggregate or stack, both interpolicy and intrapolicy, the underinsured motorist coverages of the relatives and to collect on those stacked coverages. Mitchell v. Nationwide Mut. Ins. Co., 335 N.C. 433, 439 S.E.2d 110 (1994).

Phantom Vehicle. —

The legislature never intended for subdivisions (b)(3) and (b)(4) of this section to provide coverage where plaintiff was injured by an unknown/uninsured motorist without making contact with the unknown motorist's vehicle. Johnson v. North Carolina Farm Bureau Ins. Co., 112 N.C. App. 623, 436 S.E.2d 265 (1993).

An unidentified motor vehicle is statutorily treated as an uninsured motor vehicle. Johnson v. North Carolina Farm Bureau Ins. Co., 112 N.C. App. 623, 436 S.E.2d 265 (1993).

"Using" a Vehicle. — Where plaintiff was struck while walking on the shoulder of the road in search of mechanical assistance after the vehicle he was driving broke down, plaintiff was "using" the vehicle at the time of the accident. As such, plaintiff was an insured of the insurance company at the time of the accident. Falls v. North Carolina Farm Bureau Mut. Ins. Co., 114 N.C. App. 203, 441 S.E.2d 583, cert. denied, 337 N.C. 691, 448 S.E.2d 521 (1994).

Van which child had just left when she was hit by a truck was in "use" at the time of the accident where there was a casual connection between the use of the van and the accident, in that it was because van was parked where it was, child had to cross the roadway, therefore auto policy provided coverage. Nationwide Mut. Ins. Co. v. Davis, 118 N.C. App. 494, 455 S.E.2d 892 (1995).

"Nonfleet" Vehicles. — Fire vehicles listed in policy were private passenger vehicles not used in insured's business and hence "nonfleet" vehicles to which the exception to intrapolicy stacking of subdivision (b)(4) as it read prior to 1991 did not apply. McCaskill v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 118 N.C. App. 320, 454 S.E.2d 842 (1995).

Throwing an object from a car at someone on the side of the road was an independent act disassociated from the use of an automobile, for which the insurance policy did not provide coverage through it's "arising from the ownership maintenance or use of" language. Providence Wash. Ins. Co. v. Locklear ex rel. Smith, 115 N.C. App. 490, 445 S.E.2d 418 (1994).

Obligation to Indemnify, Defend, or Reimburse Where There is Other Insurance. — Where defendant insurance policy proved that, if there is other applicable insurance, defendant will pay its pro rata share of the minimum limits, the trial court erred in finding and concluding that defendant did not have an obligation to indemnify, defend, or reimburse. Integon Indem. Corp. v. Universal Underwriters Ins. Co., 116 N.C. App. 279, 447 S.E.2d 512, cert. granted, 338 N.C. 516, 452 S.E.2d 210 (1994).

Reducing Defendant's Liability to Injured Plaintiff by Amount of Workers' Compensation Paid to Plaintiff Was Improper. —

Defendant insurance company, insurer of vehicle plaintiff was driving at the time of collision, was not entitled to reduce the limits of its uninsured motorists coverage by any amounts paid or to be paid to plaintiff or on her behalf by her employer's workers' compensation insurance carrier as workers' compensation benefits; employer's worker's compensation insurance carrier was entitled to a lien against all amounts paid or to be paid to plaintiff by defendant insurer of vehicle. Hieb v. St. Paul Fire & Marine Ins. Co., 112 N.C. App. 502, 435 S.E.2d 826 (1993).

Use by Prohibited Party. — This section did not impose coverage when owner's permittee gave possession to a third party who knew that he was prohibited from using the vehicle. Nationwide Mut. Ins. Co. v. Baer, 113 N.C. App. 517, 439 S.E.2d 202 (1994).

Where the forecast of evidence before the trial court showed there was no collision or contact between the automobile driven by the unknown motorist, which allegedly caused accident, and any other automobile, including that driven by plaintiff's intestate, defendant insurance company was entitled to judgment as a matter of law. Andersen v. Baccus, 335 N.C. 526, 439 S.E.2d 136 (1994).

Out of State Law Applied. — Although North Carolina's legislature, in subsection (b), has determined that family members are not to be excluded from primary or uninsured motorist/underinsured motorist coverage, where Tennessee law governed because significant connection existed with Tennessee and the connection with North Carolina was casual, family member exclusion in policy would be applied. Johns v. Automobile Club Ins. Co., 118 N.C. App. 424, 455 S.E.2d 466 (1995).

Payments made to the victim pursuant to under-insured or uninsured coverage are from a collateral source as defined in § 15B-2; an award under the Crime Victims Compensation Act, Chapter 15B, will be reduced to the extent that the economic loss will be recouped from under-insured or uninsured coverage. Onley v. Nationwide Mut. Ins. Co., 118 N.C. App. 686, 456 S.E.2d 882 (1995).

Applied in Wiggins v. Nationwide Mut. Ins. Co., 112 N.C. App. 26, 434 S.E.2d 642 (1993).

Cited in Cagle v. Teachy, 111 N.C. App. 244, 431 S.E.2d 801 (1993); Hackett v. Bonta, 113 N.C. App. 89, 437 S.E.2d 687 (1993); Ragan v. Hill, 337 N.C. 667, 447

S.E.2d 371 (1994); Grimsley v. Nelson, 117 N.C. App. 329, 451 S.E.2d 336 (1994), cert. granted, 340 N.C. 111, 455 S.E.2d 661 (1995).

II. THE OMNIBUS CLAUSE.

Where the named insured did not hold legal title to the automobile involved in the collision and dealer plates affixed thereto constituted the sole relationship between the car and the dealership, standing alone this connection was simply too weak to impose mandatory liability coverage on the basis of the owner's policy provisions of subsection (b). McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487, cert. denied, 337 N.C. 694, 448 S.E.2d 528 (1994).

III. UNINSURED MOTORIST COVERAGE.

Coverage for Person Walking Down the Street. — As a person insured of the first class, plaintiff was entitled to UM benefits under the policy regardless of whether she was riding in the insured vehicle or walking down the street. Bray v. North Carolina Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79, cert. granted, — N.C. —, 449 S.E.2d 565 (1994).

Insolvency of Insurer of Vehicle Causing Loss. —

Under an insurance policy providing that a vehicle is uninsured if the liability insurer "is or becomes insolvent" without specifying any period of time, an uninsured motorist claim may not be barred even though the minimum period specified in subsection (b)(3)(b) has elapsed. North Carolina Ins. Guar. Ass'n v. State Farm Mut. Auto. Ins. Co., 115 N.C. App. 666, 446 S.E.2d 364 (1994).

While the General Assembly has prescribed the minimum time period within which insolvency protection must be provided, it also has expressly permitted an insurer to include, within a policy, coverage which extends beyond the mandated minimum term. North Carolina Ins. Guar. Ass'n v. State Farm Mut. Auto. Ins. Co., 115 N.C. App. 666, 446 S.E.2d 364 (1994).

Subrogation Lien. — The workers' compensation carrier for plaintiffs had a subrogation lien on the uninsured motorist policy proceeds paid to plaintiff employee who was injured in an automobile accident occurring while within the scope of employment. Bailey v. Nationwide Mut. Ins. Co., 112 N.C. App. 47, 434 S.E.2d 625 (1993).

Stacking Not Required. —

The language in insurance company's policy was unambiguous and straightforward and it did not permit the intrapolicy stacking of its uninsured motorist (UM) coverage; therefore, the UM policy coverages on the three separate vehicles covered by plaintiffs' auto liability insurance policy with defendant insurance company would not be stacked intrapolicy to satisfy husband and wife's damages. Bailey v. Nationwide Mut. Ins. Co., 112 N.C. App. 47, 434 S.E.2d 625 (1993).

Uninsured motorist provision of insurance policy held to provide coverage for parent's claim for minor child's medical expenses; child's distinct claims and coverage, raised under his separate contract of insurance, were irrelevant. Nationwide Mut. Ins. Co. v. Lankford, 118 N.C. App. 368, 455 S.E.2d 484 (1995).

IV. UNDERINSURED MOTORIST COVERAGE.

Rejection of Coverage Prior to Amendment. — Insured's rejection of underinsured motorists coverage, prior to the 1991 statutory amendment and prior to the approval of new form reflecting the substance of the statutory amendment, was not still valid and effective with respect to an accident that occurred after the rejection form had been substantially revised and after the policy had been renewed. Maryland Cas. Co. v. Smith, 117 N.C. App. 593, 452 S.E.2d 318 (1995).

Definition of Underinsured Does Not Incorporate Definition of Uninsured. — The legislature did not intend to fully incorporate the definition of an uninsured motor vehicle into the definition of an underinsured highway vehicle. Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

State-Owned Vehicles Can Be Underinsured Vehicles. — An underinsured highway vehicle as defined in subsection (b)(4) of this section can include a state-owned vehicle. Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

Definition of "Person Insured." —

Where plaintiff lived in the same household as his father, the owner of an automobile insurance policy providing underinsured motorist (UIM) coverage for two vehicles, plaintiff was a "person insured" under the policy and was entitled to the same rights to stack coverages intrapolicy as the owner. Miller v. Nationwide Mut. Ins. Co., 112 N.C. App. 295, 435 S.E.2d 537 (1993), cert. denied, 335 N.C. 770, 442 S.E.2d 519 (1994).

Vehicle Not Included. — An underinsured vehicle, as that term is used in subdivision (b)(4), does not include a tort-feasor's vehicle whose available liability insurance is less than the relevant underinsured motorist (UIM) coverage. Ray v. Atlantic Cas. Ins. Co., 112 N.C. App. 259, 435 S.E.2d 80, cert. denied, 335 N.C. 559, 439 S.E.2d 151 (1993).

Policy provisions which excluded "owned vehicles" from underinsured motorist (UIM) coverage were invalid because they conflicted with the statutory provisions for UIM coverage contained within the Motor Vehicle Safety and Financial Responsibility Act. State Farm Mut. Auto. Ins. Co. v. Young, 115 N.C. App. 68, 443 S.E.2d 756, cert. granted, 338 N.C. 523, 453 S.E.2d 168 (1994).

An owned vehicle exclusion is contrary to the terms of subdivision (b)(4), whether it is judicially imposed or whether it is contained in the underinsured motorist (UIM) portion of the policy. Nationwide Mut. Ins. Co. v. Mabe, 115 N.C. App. 193, 444 S.E.2d 664, cert. granted, — N.C. —, 449 S.E.2d 748, cert. granted, — N.C. —, 450 S.E.2d 485 (1994).

Exhaustion clause of insurance policy, etc. —

Subdivision (b)(4) requires a uninsured motorist (UIM) plaintiff to exhaust all remedies by seeking payment of judgments or settlements from the tortfeasor and liability insurer before seeking payment form the UIM insurer. Spivey v. Lowery, 116 N.C. App. 124, 446 S.E.2d 835, cert. denied, 338 N.C. 312, 452 S.E.2d 312 (1994).

Stacking Not Required Prior to Amendment. — The 1983 version of subdivision (b)(4), which was prior to 1985 amendment, did not require that the underinsured motorist coverages in the same policy be aggregated or stacked. Proctor v. North Carolina Farm Bureau Mut. Ins. Co., 335 N.C. 533, 439 S.E.2d 112 (1994).

Stacking of Coverage—Fleet Policies. — Fleet policies may not be stacked onto nonfleet policies under subsection (b)(4) of this section. Isenhour v. Universal Underwriters Ins. Co., 113 N.C. App. 152, 437 S.E.2d 702 (1993), cert. granted, 336 N.C. 73, 445 S.E.2d 34 (1994).

Stacking Permitted for Private Passenger Vehicles. — Insurance company's owned vehicle exclusion was unenforceable and the insureds were entitled to stack their underinsured motorist (UIM) coverage if the vehicles listed in the policy were private passenger motor vehicles. Nationwide Mut. Ins. Co. v. Mabe, 115 N.C. App. 193, 444 S.E.2d 664, cert. granted, — N.C. —, 449 S.E.2d 748, cert. granted, — N.C. —, 450 S.E.2d 485 (1994).

Stacking Allowed in Determining Whether Tortfeasor's Car Is an "Underinsured Highway Vehicle." —

Underinsured motorist (UIM) coverage for a nonowner Class I insured under one policy could be stacked with the UIM coverage under another policy in which the party was also a nonowner insured. Mitchell v. Nationwide Ins. Co., 110 N.C. App. 16, 429 S.E.2d 351 (1993), pet. disc. rev. granted, 334 N.C. 164, 432 S.E.2d 363 (1993), aff'd, 335 N.C. 433, 439 S.E.2d 110 (1994).

Family Unit Entitled to Intrapolicy Stacking. —

Automobile accident victim was entitled to stack with his own policy providing underinsured motorist benefits the policies of his father and brother, both interpolicy and intrapolicy. Any amount he received under those policies would be reduced by the amount he received from the tortfeasor's exhausted liability policy. Harrington v. Stevens, 334 N.C. 586, 434 S.E.2d 212 (1993).

General Release Not Altered by Consent. — Uninsured motorist (UIM) carrier's consent to settlement did not alter the legal effect of a general release signed by plaintiff. Spivey v. Lowery, 116 N.C. App. 124, 446 S.E.2d 835, cert. denied, 338 N.C. 312, 452 S.E.2d 312 (1994).

The family member exclusion in automobile insurance policy could not exclude underinsured motorist (UIM) coverage for injuries sustained by the insured while occupying a vehicle owned by the insured which was not listed in the policy. Harper v. Allstate Ins. Co., 117 N.C. App. 302, 450 S.E.2d 759 (1994), cert. granted, 339 N.C. 612, 454 S.E.2d 251 (1995).

Underinsured Benefits Reduced by Worker's Compensation Benefits. — An underinsured motorist coverage carrier under a business automobile policy is entitled to reduce its coverage by the amount of workers' compensation benefits which the same insurer paid to an injured worker. Brantley v. Starling, 336 N.C. 567, 444 S.E.2d 170 (1994).

In order to have amounts payable under underinsured motorist coverage reduced by amounts paid under workers' compensation coverage, subsection (e) does not require that the same entity provide both coverages. Brantley v. Starling, 336 N.C. 567, 444 S.E.2d 170 (1994).

No Set Off from UIM Coverage to Extent Workers' Compensation Benefits Paid. —

Where truck, in which plaintiff was riding at the time of the accident, was a business vehicle covered by the terms of the business auto policy with respect to underinsured motorist coverage, the trial court erred in finding that defendant insurance company, the underinsured motorist coverage carrier, was entitled to reduce its coverage by the amount of workers' compensation benefits which the same company paid to plaintiff. Brantley v. Starling, 111 N.C. App. 669, 433 S.E.2d 1, aff'd, 336 N.C. 567, 444 S.E.2d 170 (1994).

§ 20-279.31. Other violations; penalties.

(a) The Commissioner shall suspend the license of a person who fails to report a reportable accident, as required by G.S. 20-166.1, until the Division receives a report and for an additional period set by the Commissioner. The additional period may not exceed 30 days.

(b) Any person who does any of the following commits a Class 1 misdemeanor:

(1) Gives information required in a report of a reportable accident, knowing or having reason to believe the information is false.

(2) Forges or without authority signs any evidence of proof of financial responsibility.

(3) Files or offers for filing any evidence of proof of financial responsibility, knowing or having reason to believe that it is forged or signed without authority.

(c) Any person willfully failing to return a license as required in G.S. 20-279.30 is guilty of a Class 3 misdemeanor.

(c1) Any person who makes a false affidavit or knowingly swears or affirms falsely to any matter under G.S. 20-279.5, 20-279.6, or 20-279.7 is guilty of a Class I felony.

(d) Any person who shall violate any provision of this Article for which no penalty is otherwise provided is guilty of a Class 2 misdemeanor. (1953, c. 1300, s. 31; 1983, c. 610, s. 2; 1993, c. 539, ss. 384, 1261; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 191, s. 7.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, rewrote subsections (a) and (b); and inserted "a" preceding "license" in subsection (c).

§ 20-279.33. Self-insurers.

CASE NOTES

Cited in Cochran v. North Carolina Farm Bureau Mut. Ins. Co., 113 N.C. App. 260, 437 S.E.2d 910 (1994).

§ 20-279.34: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 27, effective July 16, 1994.

ARTICLE 11.

Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.

§ 20-284. Violation a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

§ 20-286. Definitions.

The following definitions apply in this Article:

(1), (2) Repealed by Session Laws 1973, c. 1330, s. 39.

(2a) Dealership facilities. — The real estate, buildings, fixtures and improvements devoted to the conduct of business under a franchise.

(2b) Designated family member. — The spouse, child, grandchild, parent, brother, or sister of a dealer, who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who under the laws of intestate succession of this State is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.

(3) Distributor. — A person, resident or nonresident of this State, who sells or distributes new motor vehicles to new motor vehicle dealers in this State, maintains a distributor representative in this State, controls any person, resident

or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to any motor vehicle dealer in this State.

(4) Distributor branch. — A branch office maintained by a distributor for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising the distributor's representatives in this State.

(5) Distributor representative. — A person employed by a distributor or a distributor branch for the purpose of selling or promoting the sale of new motor vehicles or otherwise conducting the business of the distributor or distributor branch.

(5a) Established office. — An office that meets the following requirements:

a. Contains at least 96 square feet of floor space in a permanent enclosed building.

b. Is a place where the books, records, and files required by the Division under this Article are kept.

(6) Established salesroom. — A salesroom that meets the following requirements:

a. Contains at least 96 square feet of floor space in a permanent enclosed building.

b. Displays, or is located immediately adjacent to, a sign having block letters not less than three inches in height on contrasting background, clearly and distinctly designating the trade name of the business.

c. Is a place at which a permanent business of bartering, trading, and selling motor vehicles will be carried on in good faith on an ongoing basis whereby the dealer can be contacted by the public at reasonable times.

d. Is a place where the books, records, and files required by the Division under this Article are kept.

The term includes the area contiguous to or located within 500 feet of the premises on which the salesroom is located. The term does not include a tent, a temporary stand, or other temporary quarters. The minimum area requirement does not apply to any place of business lawfully in existence and duly licensed on or before January 1, 1978.

(7) Factory branch. — A branch office, maintained for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising the factory branch's representatives in this State.

(8) Factory representative. — A person employed by a manufacturer or a factory branch for the purpose of selling or promoting the sale of the manufacturer's motor vehicles or otherwise conducting the business of the manufacturer or factory branch.

(8a) Franchise. — A written agreement or contract between any new motor vehicle manufacturer, and any new motor vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchised product or leases or rents the dealership premises.

(8b) Franchised motor vehicle dealer. — A dealer who holds a currently valid franchise as defined in G.S. 20-286(8a) with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers.

(8c) Good faith. — Honest in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in G.S. 25-2-103(1)(b).

(8d) Independent motor vehicle dealer. — A dealer in used motor vehicles.

(8e) Manufacturer. — A person, resident or nonresident, who manufactures or assembles new motor vehicles, or who imports new motor vehicles for distribution through a distributor, including any person who acts for and is under the control of the manufacturer or assembler in connection with the distribution of the motor vehicles. Additionally, the term "manufacturer" shall include the terms "distributor" and "factory branch."

(9) Repealed by Session Laws 1973, c. 1330, s. 39.

(10) Motor vehicle. — Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above.

(11) Motor vehicle dealer or dealer. — A person who does any of the following:

a. For commission, money, or other thing of value, buys, sells, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

b. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

c. Engages, wholly or in part, in the business of selling new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.

d. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.

e. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail.

The term "motor vehicle dealer" or "dealer" does not include any of the following:

a. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.

b. Public officers while performing their official duties.

c. Persons disposing of motor vehicles acquired for their own use or the use of a family member, and actually so used, when the vehicles have been acquired and used in good faith and not for the purpose of avoiding the provisions of this Article.

d. Persons who sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance, and auctioneers who sell motor vehicles for the owners or the heirs of the owners of those vehicles as part of an auction of other personal or real property or for the purpose of settling an estate or closing a business or who sell motor vehicles on behalf of a governmental entity, and who do not maintain a used car lot or building with one or more employed motor vehicle sales representatives.

e. Persons manufacturing, distributing or selling trailers and semitrailers weighing not more than 750 pounds and carrying not more than a 1,500 pound load.

f. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located.

g. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

h. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motor vehicles owned by others.

i. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

j. Any real property owner who leases any interest in property for use by a dealer.

k. Any person acquiring any interest in a motor vehicle for a family member.

(12) Motor vehicle sales representative or salesman. — A person who is employed as a sales representative by, or has an agreement with, a motor vehicle dealer or a wholesaler to sell or exchange motor vehicles.

(13) New motor vehicle dealer. — A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, new or new and used motor vehicles.

(13a) Person. — Defined in G.S. 20-4.01.

(13b) Relevant market area or trade area. — The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer the relevant market area shall be as follows:

a. If the population in an area within a radius of 10 miles around the proposed site is 250,000 or more, the relevant market area shall be that area within the 10 mile radius; or

b. If the population in an area within a radius of 10 miles around the proposed site is less than 250,000, but the population in an area within a radius of 15 miles around the proposed site is 150,000 or more, the relevant market area shall be that area within the 15 mile radius; or

c. Except as defined in subparts a. and b., the relevant market area shall be the area within a radius of 20 miles around an existing dealer.

In determining population for this definition the most recent census by the U.S. Bureau of the Census or the most recent population update either from Claritas Inc. or other similar recognized source shall be accumulated for all census tracts either wholly or partially within the relevant market area. In accumulating population for this definition, block group and block level data shall be used to apportion the population of census tracts which are only partially within the relevant market area so that population outside of the applicable radius is not included in the count.

(14) Repealed by Session Laws 1973, c. 1330, s. 39.

(15) Retail installment sale. — A sale of one or more motor vehicles to a buyer for the buyer's use and not for resale, in which the price thereof is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under a form of contract designated as a conditional sale, bailment lease, chattel mortgage or otherwise.

(16) Used motor vehicle dealer. — A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, used motor vehicles only.

(17) Wholesaler. — A person who sells or distributes used motor vehicles to motor vehicle dealers in this State, has a sales representative in this State, or controls any person who in whole or in part offers for sale, sells, or distributes any used motor vehicle to a motor vehicle dealer in this State. The provisions of G.S. 20-302, 20-305.1, and 20-305.2 that apply to distributors also apply to wholesalers. (1955, c. 1243, s. 2; 1967, c. 1126, s. 1; c. 1173; 1973, c. 1330, s. 39; 1977, c. 560, s. 1; 1983, c. 312; c. 704, ss. 2, 3, 21; 1987, c. 381; 1991, c. 527, s. 1; c. 662, s. 1; 1991 (Reg. Sess., 1992), c. 819, s. 23; 1993, c. 331, s. 1; 1995, c. 234, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 13, 1995, and not to affect pending litigation, in subdivision (13b), in the second sentence from the end substituted "Claritas Inc." for "the National Planning Data Corporation" and added the last sentence.

§ 20-297. Retention and inspection of certain records.

(a) Vehicles. — A dealer must keep a record of all vehicles received by the dealer and all vehicles sold by the dealer. The records must contain the information that the Division requires.

(b) Inspection. — The Division may inspect the pertinent books, records, letters, and contracts of a licensee relating to any written complaint made to the Division against the licensee. (1955, c. 1243, s. 13; 1975, c. 716, s. 5; 1995, c. 163, s. 5.)

Effect of Amendments. — The 1995 amendment, effective June 5, 1995, rewrote the catchline, which read "Inspection of records, etc."; added subsection (a); added the subsection (b) designation and subcatchline; in subsection (b) substituted "the Division against the" for "him against such" preceding "licensee"; and made a stylistic change.

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred,

sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new

motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner must conduct the hearing and render his final determination as expeditiously as possible, but in any event no later than 180 days after a protest is filed. Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner must conduct the hearing and render a final determination no later than 180 days after a petition has been filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer

in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal.—

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. —

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. —

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or

2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.

3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and

general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated family member. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.
3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.
4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information

shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehi-

cles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement. (1955, c. 1243, s. 21; 1973, c. 88, ss. 1, 2; 1983, c. 704, ss. 5-10; 1987, c. 827, s. 1; 1991, c. 510, ss. 2-4; 1993, c. 123, s. 1; c. 331, s. 2; 1995, c. 163, s. 13; c. 480, s. 3.)

Editor's Note. —

Session Laws 1995, c. 480, which amended subdivision (7) of this section, in s. 4 provides that an owner who appointed a successor prior to the effective date of those amendments, October 1, 1995, may obtain the benefits of those amendments by notifying the manufacturer or distributor, and by otherwise complying with the provisions of subdivision (7); and in s. 5, provides that neither the amendments to subdivision (7) nor the provisions of s. 4 shall be deemed to invalidate an appointment made prior to that date.

Session Laws 1995, c. 480, s. 6, provides that the amendments by that act to subdivision (7) of this section, and the provisions of ss. 4 and 5 noted above, are effective October 1, 1995, and are applicable on and after that date to the appointment by any owner of a new motor vehicle dealership of any successor to succeed in the owner's ownership interest in the dealership.

Effect of Amendments. — Session Laws 1995, c. 163, s. 13, effective June 5, 1995, inserted "dealer" preceding "in the relevant" in subdivision (5)b.6.

Session Laws 1995, c. 480, s. 3, rewrote subdivision (7). For effective date and applicability, see editor's note.

CASE NOTES

Amendment Not Impairment of Right to Contract. — The amendment to this section, which provided a procedure by which an automobile dealer could seek administrative review of its franchisor's refusal to approve a relocation, was a patently reasonable exercise of the State's police power and was not an unconstitutional impairment of the parties' right to contract. Nissan Div. of Nissan Motor Corp. in United States v. Nissan, 111 N.C. App. 748, 434 S.E.2d 224 (1993).

Notification by Registered or Certified Mail. — The General Assembly intended for the phrase registered or certified mail, return receipt requested to refer exclusively to the delivery service offered by the U.S. Mail and not to notice delivered by any private delivery service. Nissan Div. of Nissan Motor Corp. in United States v. Fred Anderson Nissan, 337 N.C. 424, 445 S.E.2d 600 (1994).

Delivery by Federal Express, with return receipt, was held to be registered mail within the meaning of this section. Nissan Div. of Nissan Motor Corp. in United States v. Nissan, 111 N.C. App. 748, 434 S.E.2d 224 (1993).

Since the language of this section requires that notice be sent through registered or certified mail, return receipt requested and provides that failure to do so shall constitute waiver, car manufacturer waived any objection to dealer's proposed relocation by sending its notice by Federal Express. Nissan Div. of Nissan Motor Corp. in United States v. Fred Anderson Nissan, 337 N.C. 424, 445 S.E.2d 600 (1994).

§ 20-305.1. Automobile dealer warranty obligations.

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 24-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections (a) and (b) above and subsection (d) below, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty.

(d) Transportation damages. —

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by

the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and

b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.

(5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) Damage/Repair Disclosure. — Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail

price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of "motorcycles" as defined in G.S. 20-4.01(27). (1973, c. 88, s. 3; c. 1331, s. 3; 1983, c. 704, ss. 11-13; 1987, c. 827, s. 1; 1989, c. 614, ss. 1, 2; 1991, c. 561, ss. 1-4; 1993, c. 116, ss. 1, 2; 1995, c. 156, s. 1.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, in subsection (b), in the second sentence deleted "compensation, service incentives, rebates, or other forms of sales incentive" following "parts or service", substituted "12-month period" for "24-month period", and at the end of the sentence substituted "payment of the claim by the manufacturer, factory branch, distributor, or distributor branch" for "claim"; and added the present third sentence.

§ 20-305.4. (Applicable January 1, 1997 — see editor's note) Motor Vehicle Dealers' Advisory Board.

(a) The Motor Vehicle Dealers' Advisory Board shall consist of six members; three of which shall be appointed by the Speaker of the House of Representatives, and three of which shall be appointed by the President Pro Tempore of the Senate to consult with and advise the Commissioner with respect to matters brought before the Commissioner under the provisions of G.S. 20-304 through 20-305.4.

(b) Each member of the Motor Vehicle Dealers' Advisory Board shall be a resident of North Carolina. Three members of the Board shall be franchised dealers in new automobiles or trucks, duly licensed and engaged in business as such in North Carolina, provided that no two of such dealers may be franchised to sell automobiles or trucks manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Three members of the Board shall not be motor vehicle dealers or employees of a motor vehicle dealer.

(c) The Speaker shall appoint two of the dealer members and one of the public members and shall fill any vacancy in said positions and the President Pro Tempore of the Senate shall appoint one of the dealer members and two of the public members and shall fill any vacancy in said positions. In making the initial appointments the Speaker shall designate that the two dealer members shall serve for one and three years respectively and the public member shall serve for two years, and in making the initial appointments the Lieutenant Governor shall designate that the dealer member shall serve for two years and the two public members shall serve for one and three years respectively.

(d) Two members of the first Board appointed shall serve for a period of three years, two members of the first Board shall serve for a period of two years, and two members of the first Board shall serve for a period of one year. Subsequent appointments shall be for terms of three years, except appointments to fill vacancies which shall be for the unexpired terms. Members of the Board shall meet at the call of the Commissioner and shall receive as compensation for their services seven dollars ($7.00) for each day actually engaged in the exercise of the duties of the Board and such travel expenses and subsistence allowances as are generally allowed other State commissions and boards. (1973, c. 88, s. 3; 1995, c. 490, s. 36.)

For this section as applicable until January 1, 1997, see the main volume.

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in subsection (a) and in the first sentence of subsection (c). For the applicability of this amendment, see Editor's note.

§ 20-308. Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 13.

The Vehicle Financial Responsibility Act of 1957.

§ 20-309.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 28, effective July 16, 1994.

§ 20-310: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 29, effective February 1, 1995.

§ 20-310.2: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 31, effective February 1, 1995.

Cross References. — This section is repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 31, effective February 1, 1995. For provisions concerning termination of a nonfleet private passenger motor vehicle insurance policy effective February 1, 1995, see G.S. 58-36-85.

§ 20-312. Failure of owner to deliver certificate of registration and plates after revocation; notice of revocation.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-313. Operation of motor vehicle without financial responsibility a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-313.1. Making false certification or giving false information a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 14.

Driver Training School Licensing Law.

§ 20-327. Penalties for violating Article or regulations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 15.

Vehicle Mileage Act.

§ 20-350. Criminal offense.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 15A.

New Motor Vehicles Warranties Act.

§ 20-351. Purpose.

CASE NOTES

The Lemon Law has several purposes; it protects consumers who purchase defective new vehicles, it encourages private settlement between consumers and manufacturers, and it seeks a fair result that neither unduly benefits nor unduly burdens either party to a dispute. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

§ 20-351.1. Definitions.

CASE NOTES

Cited in Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

§ 20-351.2. Require repairs; when mileage warranty begins to accrue.

CASE NOTES

A manufacturer's express warranties do not necessarily include that the vehicle will meet its owner's, or lessor's, expectations. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Cause of Nonconformity. — There is no statutory requirement that the buyer in all cases prove the cause of the nonconformity or identify any specific mechanical defect related to the nonconformity. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Although plaintiff did not show the precise mechanical defect within his braking system, he produced enough evidence to establish that shimmy and clicking were caused by a "defect" in the braking system; since, the warranty covered shimmying and clicking caused by a "defect," plaintiff's evidence was sufficient to support the trial court's finding that the shimmy and clicking constituted a nonconformity to, or breach of, the warranty. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

§ 20-351.3. Replacement or refund; disclosure requirement.

CASE NOTES

A manufacturer's express warranties do not necessarily include that the vehicle will meet its owner's, or lessor's, expectations. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Construction with Other Provisions. — The remedies provision, § 20-351.8, by referring directly to this section, fully incorporates the amount and type of relief available at the consumer's option into a jury's calculation of monetary damages. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

A consumer may not retain a vehicle for which he has received a refund under the Lemon Law whether the refund arises out of a request by the consumer pursuant to subsection (a) or out of a judgment for monetary damages. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

§ 20-351.8. Remedies.

CASE NOTES

Construction with Other Provisions. — This section, by referring directly to § 20-351.3, fully incorporates the amount and type of relief available at the consumer's option into a jury's calculation of monetary damages. Buford v. GMC, 339 N.C. 396, 451 S.E.2d 293 (1994).

Only the net loss to the consumer should be trebled. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Reduction of Damages by Reasonable Allowance for Use. — Trial court improperly calculated plaintiff's recovery by failing to reduce plaintiff's damages by the reasonable allowance for use before trebling damages; since the allowance for plaintiff's use of vehicle exceeded his damages, plaintiff recovered no damages on his claim under the act. Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 451 S.E.2d 618 (1994).

Attorney's Fees. — The term "court" as used in subdivision (3) of this section was interpreted to mean the trial judge. Therefore, for purposes of awarding attorney's fees, it is the trial judge, not the jury, that is to make the finding required by subdivision (3). After making such a finding, the court may, in its discretion, award attorney's fees. Buford v. GMC, 112 N.C. App. 437, 435 S.E.2d 782 (1993), reversed on other ground, 339 N.C. 396, 451 S.E.2d 293 (1994).

ARTICLE 16.

Professional Housemoving.

§ 20-371. Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 17.

Motor Carrier Safety Regulation Unit.

Part 1. General Provisions.

§ 20-376. Definitions.

As used in this Article,

(1) "Certificate" means a certificate of public convenience and necessity issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a common carrier by motor vehicle.

(2) "Certificate of Exemption" means a certificate issued by the Division authorizing transportation services which are exempt from economic regulations under the Public Utilities Act.

(3) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(4) "Common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property or any class or classes thereof for compensation, whether over regular or irregular routes, except as exempted in G.S. 62-260.

(5) "Contract carrier by motor vehicle" means any person which, under an individual contract or agreement with another person and with such additional persons as may be approved by the North Carolina Utilities Commission, engages in the transportation other than the transportation referred to in subdivision (4) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in G.S. 62-260.

(6) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(7) "Exempt carrier" means any person providing transportation by motor vehicle for compensation which is declared to be exempt from economic regulation by the North Carolina Utilities Commission or the Interstate Commerce Commission.

(8) "For-hire carrier" means any person engaged in the transportation of persons or property by motor vehicle for compensation.

(9) "Foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.

(10) through (12) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(13) "Interstate commerce" means commerce between any place in a state and any place in another state or between places in the same state through another state.

(14) "Intrastate commerce" means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.

(15) "Intrastate operations" means the transportation of persons or property for compensation in intrastate commerce.

(16) "Motor carrier" means both a for-hire carrier by motor vehicle and a private carrier by motor vehicle.

(17), (18) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(19) "Permit" means a permit issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a contract carrier by motor vehicle.

(20) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994.

(21) "Private carrier" means any person not included in the definitions of common carrier or contract carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property for compensation.

(22) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5, effective July 1, 1994. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, repealed subdivisions (3), (6), (10) through (12), (17), (18), (20), and (22).

Part 2. Authority and Powers of Division.

§ 20-382. Registration of for-hire interstate motor carriers and verification that their vehicles are insured.

(a) Registration. — A motor carrier may not operate a for-hire motor vehicle in interstate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) Registered its operations with the Division by doing one of the following:
  a. Filing a copy of the certificate of authority issued to it by the Interstate Commerce Commission allowing it to operate in this State and any amendments to that authority.
  b. Certifying to the Division that it carries only items that are not regulated by the Interstate Commerce Commission.

(2) Verified, in accordance with subsection (b) or (c) of this section, that it has insurance for each for-hire motor vehicle it operates.

(3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification for ICC-Regulated Motor Carriers. — A motor carrier that operates a for-hire motor vehicle in interstate commerce in this State, is regulated by the Interstate Commerce Commission, and designates this State as its registration state must obtain a receipt from the Division verifying that each for-hire motor vehicle the motor carrier operates in any jurisdiction is insured. To obtain a receipt, the motor carrier must apply annually to the Division during the application period and state the number of for-hire motor vehicles the motor carrier intends to operate in each jurisdiction during the next calendar year. The certificate of authority issued to the motor carrier by the Interstate Commerce Commission is proof that the motor carrier has insurance for its for-hire motor vehicles.

The motor carrier must keep a copy of the receipt in each of its for-hire motor vehicles. The motor carrier may transfer the receipt from one for-hire motor vehicle to another as long as the total number of for-hire motor vehicles operated in any jurisdiction and in all jurisdictions does not exceed the number stated on the receipt.

A motor carrier may operate more for-hire motor vehicles in a jurisdiction than stated in its most recent annual application only if the motor carrier files another application with the Division and obtains a receipt stating the increased number. A motor carrier that obtains a receipt for an increased number of for-hire motor vehicles must put a copy of the new receipt in each of its for-hire motor vehicles. The new receipt replaces rather than supplements the previous receipt.

(c) Insurance Verification for Nonregulated Motor Carriers. — A motor carrier that operates a for-hire motor vehicle in interstate commerce in this State and is exempt from regulation by the Interstate Commerce Commission must verify to the Division that each for-hire motor vehicle the motor carrier operates in this State is insured. To do this, the motor carrier must obtain annually for each for-hire motor vehicle a cab card approved by the Commissioner and a North Carolina identification stamp issued by the Division. To obtain an identification stamp, the motor carrier must apply annually to the Division during the application period for an identification stamp for each for-hire motor vehicle the motor carrier intends to operate in this State during the next 12-month period beginning February 1.

The motor carrier must place the identification stamp on the cab card and keep the cab card in the for-hire motor vehicle for which it was issued. An identification stamp is issued for a specific for-hire motor vehicle and is not transferable from one for-hire motor vehicle to another.

A motor carrier may operate in this State a for-hire motor vehicle for which it did not obtain an identification stamp during the most recent annual application period only if it obtains for that vehicle either a cab card and identification stamp or an emergency permit. A motor carrier may obtain an additional identification stamp after the close of the annual application period by filing an application for it with the Division. An identification stamp issued after the close of the annual application period expires the same date as one issued during the annual application period.

A motor carrier may obtain an emergency permit by filing an application for it with the Division. An emergency permit allows the motor carrier to operate a for-hire motor vehicle in this State without a cab card and identification stamp between the time the motor carrier has applied for an identification stamp and the time the Division issues the identification stamp. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, substituted "Registration of for-hire interstate motor carriers and verification that their vehicles are insured" for "Interstate carriers" as the section catchline; and rewrote this section.

§ 20-382.1. Registration of for-hire intrastate motor carriers and verification that their vehicles are insured.

(a) Registration. — A motor carrier may not operate a for-hire motor vehicle in intrastate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) Registered its operations with the State by doing one of the following:
  a. Obtaining a certificate or a permit from the North Carolina Utilities Commission, if the motor carrier hauls regulated items.
  b. Obtaining a certificate of exemption from the Division, if the motor carrier hauls only items that are not regulated by the North Carolina Utilities Commission.
(2) Verified, in accordance with subsection (b) of this section, that it has insurance for each for-hire motor vehicle it operates in this State.
(3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification. — A motor carrier that operates a for-hire vehicle in intrastate commerce in this State must verify to the Division that each for-hire motor vehicle it operates in this State is insured. To do this, the motor carrier must submit an insurance verification form to the Division and must file annually with the Division a list of the for-hire vehicles it operates in this State. (1993 (Reg. Sess., 1994), c. 621, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 6, made this section effective upon ratification. The Act was ratified July 1, 1994.

§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.

(a) Acts. — A motor carrier who does any of the following is subject to a civil penalty of seventy-five dollars ($75.00):

(1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.

(2) Operates a for-hire motor vehicle in interstate commerce in this State that does not carry a copy of either an insurance registration receipt issued to the motor carrier or a cab card with an identification stamp issued for the vehicle, as required by G.S. 20-382.

(3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment. — When the Division finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Division for a hearing.

(c) Hearing. — Upon receiving a request for a hearing, the Commissioner must schedule a hearing within 30 days after receipt of the request. If after the hearing the Commissioner determines that the motor carrier was not liable for the penalty, the amount collected must be refunded. If after the hearing the Commissioner determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Division for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

(d) Proceeds. — A penalty imposed under this section is payable to the Division. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue. (1993 (Reg. Sess., 1994), c. 621, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 6, made this section effective upon ratification. The Act was ratified July 1, 1994.

§ 20-384. Carriers must comply with safety rules and regulations.

(a) Scope. — The Division may adopt highway safety rules for all for-hire motor carrier vehicles and all private carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of North Carolina whether common carriers, contract carriers, exempt carriers, or private carriers.

(b) Infraction. — A motor carrier who fails to conduct a safety inspection of a vehicle as required by 49 C.F.R. Part 396, the federal Motor Carrier Safety Regulations, or who fails to mark a vehicle that has been inspected as required by that Part commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars ($50.00). (1985, c. 454, s. 1; 1985 (Reg. Sess., 1986), c. 1018, s. 13; 1993 (Reg. Sess., 1994), c. 754, s. 6.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "Carriers must comply with safety rules and regulations" for "Safety regulations applicable to motor carrier and private carrier vehicles" as the section catchline; added the subsection (a) designation and catchline; in subsection (a) deleted "of Motor Vehicles" following "Division," substituted "adopt" for "promulgate," and deleted "and regulations" following "rules"; and added subsection (b).

Part 3. Fees and Charges.

§ 20-385. Fee schedule.

(a) Amounts. —

(1) Verification by a for-hire motor carrier of insurance for each for-hire motor vehicle operated in this State	$ 1.00
(2) Application by an intrastate motor carrier for a certificate of exemption	25.00
(3) Certification by an interstate motor carrier that it is not regulated by the ICC	25.00
(4) Application by an interstate motor carrier for an emergency permit	10.00.

(b) Reciprocal Agreements. — The fee set in subdivision (a)(1) of this section does not apply to the verification of insurance by an interstate motor carrier regulated by the Interstate Commerce Commission if the Division had a reciprocal agreement on November 15, 1991, with another state by which no fee is imposed. The Division had reciprocal agreements as of that date with the following states: California, Delaware, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Vermont. (1985, c. 454, s. 1; 1993 (Reg. Sess., 1994), c. 621, s. 4.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, substituted "Fee schedule" for "Particular fees and charges fixed; payment" as the section catchline; rewrote subsection (a); and added subsection (b).

Part 4. Penalties and Actions.

§ 20-390. Refusal to permit Division to inspect records made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-395. Willful injury to property of motor carrier a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-396. Unlawful motor carrier operations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 20-397. Furnishing false information to the Division; withholding information from the Division.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1995

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1995 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

November 1, 1995

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Michael F. Easley

Attorney General of North Carolina